

**UNCERTAINTY, INFLATION, REGULATIONS:
CHALLENGES FOR AMERICAN AGRICULTURE**

HEARING

BEFORE THE

**COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES**

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

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FEBRUARY 28, 2023
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CONTENTS

	Page
Finstad, Hon. Brad, a Representative in Congress from Minnesota, submitted letter	252
Miller, Hon. Max L., a Representative in Congress from Ohio, prepared statement	5
Rose, Hon. John W., a Representative in Congress from Tennessee, submitted letter	253
Scott, Hon. David, a Representative in Congress from Georgia, opening statement	4
Thompson, Hon. Glenn, a Representative in Congress from Pennsylvania, opening statement	1
Prepared statement	3
Submitted statements on behalf of:	
Broydrick, Bill, Executive Director, National Rural Lenders Roundtable	245
J.R. Simplot Company	245

WITNESSES

Duvall, Vincent "Zippy", President, American Farm Bureau Federation, Washington, D.C.	7
Prepared statement	8
Friedmann, Peter, Executive Director, Agriculture Transportation Coalition, Washington, D.C.	15
Prepared statement	16
Supplementary material	260
Rosenbusch, Corey, President and Chief Executive Officer, The Fertilizer Institute, Arlington, VA	19
Prepared statement	20
Twining, Michael, Vice President of Sales & Marketing, Willard Agri-Service; Member, Board of Directors, Agricultural Retailers Association, Worton, MD	24
Prepared statement	26
Brown, Mike, President, National Chicken Council, Washington, D.C.	34
Prepared statement	36
Supplementary material	261
Larew, Robert L., President, National Farmers Union, Washington, D.C.	173
Prepared statement	174
Supplementary material	268

UNCERTAINTY, INFLATION, REGULATIONS: CHALLENGES FOR AMERICAN AGRICULTURE

TUESDAY, FEBRUARY 28, 2023

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Committee met, pursuant to call, at 10:00 a.m., in Room 1300 of the Longworth House Office Building, Hon. Glenn Thompson [Chairman of the Committee] presiding.

Members present: Thompson, Lucas, Austin Scott of Georgia, Crawford, LaMalfa, Rouzer, Kelly, Bacon, Johnson, Baird, Mann, Feenstra, Miller of Illinois, Moore, Cammack, Finstad, Rose, Jackson of Texas, Molinaro, De La Cruz, Langworthy, Duarte, Nunn, Alford, Van Orden, Chavez-DeRemer, Miller of Ohio, David Scott of Georgia, Costa, McGovern, Adams, Spanberger, Hayes, Brown, Davids of Kansas, Slotkin, Caraveo, Salinas, Perez, Davis of North Carolina, Tokuda, Budzinski, Sorensen, Vasquez, Crockett, Jackson of Illinois, Casar, Pingree, Carbajal, Craig, and Soto.

Staff present: Parish Braden, Caleb Crosswhite, Josh Maxwell, Patricia Straughn, Trevor White, Erin Wilson, Daniel Feingold, Prescott Martin III, Ashley Smith, Joshua Tonsager, Elaine Zhang, Kate Fink, and Dana Sandman.

OPENING STATEMENT OF HON. GLENN THOMPSON, A REPRESENTATIVE IN CONGRESS FROM PENNSYLVANIA

The CHAIRMAN. The Committee will now come to order. Welcome, everybody, and thank you for joining today's hearing entitled, *Uncertainty, Inflation, Regulations: Challenges for American Agriculture*. After brief opening remarks, Members will receive testimony from our witnesses today, and then the hearing will be open to questions.

So once again, good morning, everybody, and welcome to the first House Committee on Agriculture hearing of the 118th Congress. Our focus this morning will be on the headwinds facing production agriculture. Without a comprehensive understanding of the industry's challenges, we cannot write an impactful farm bill that addresses the needs of those who grow, process, and consume the food, fuel, and fiber we are blessed to produce here in the United States.

As we seek solutions, it is my vision that this Committee will provide the necessary tools to our farmers and ranchers to ease the barriers to production felt in recent years. As Chairman, I challenge each Member of the Agriculture Committee to view all poli-

cies through the lens of science, technology, and innovation and identify forward-looking solutions throughout our work.

Our nation's farmers, ranchers, and foresters are exceptional, having increased food and fiber production nearly threefold since the 1940s. They have done so with no relative increase in inputs, serving as shining stars of sustainability and conservation practices. However, the uncertainty caused by a global pandemic, geopolitical unrest, and incessant government intrusion have led to a modest production decline in recent years. Enduring production agriculture policies are essential to our national security. Maintaining a safe, abundant, and affordable domestic food supply is equally essential, as is meeting the needs of the perennial global food crisis.

Over the last several years, I have traveled to more than 40 states and I have heard firsthand from our farmers on issues related to labor, fuel, fertilizer, inflation, and interest rates. The average cost of diesel fuel per gallon increased 95 percent from 2020 to 2022. The 2022 average Henry Hub Natural Gas Spot Price increased 53 percent from 2021. Fertilizer inputs such as nitrogen, phosphorus, and potassium increased 125 percent in 2021 and an additional 30 percent in the first 5 months of 2022 alone. Urea, the most applied nitrogen fertilizer, increased 205 percent in price between 2020 and 2022.

Last week marked 1 year since Russia's invasion of the Ukraine, which perpetuates a disrupted global food supply system, resulting in continued increased energy prices, fertilizer cost spikes and shortages, and worsening food scarcity in developing countries. At the same time, American consumers are watching in dismay as their grocery and energy bills skyrocket. The Biden Administration continues to ignore these crises, neglecting America's producers and consumers. In fact, this Administration continues to promote nonsensical regulations and policies that create needless uncertainty for farmers, ranchers, and working families, further limiting our ability to meet the growing food demands of our nation and the world. The challenges facing production agriculture are many. However, I believe that one of the few silver linings, maybe the only silver lining, is Americans' heightened awareness of the importance of a reliable domestic food supply and the producers who provide it.

As Members of the House Committee on Agriculture in a farm bill reauthorization cycle, it is our mandate to fully understand these challenges and work diligently without partisanship to ensure the passage of a strong farm bill that addresses the issues highlighted today.

Thank you to the witnesses appearing here before us today. I look forward to your testimony. And regardless of the challenges, it is time to retire our dress shoes and put on our work boots. We have a lot of work to do, and I will need every one of you at the table to help us deliver a farm bill for the backbone of this country, the American producer.

[The prepared statement of Mr. Thompson follows:]

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As we seek solutions, it is my vision that this Committee will provide the necessary tools to our farmers and ranchers to ease the barriers to production felt in recent years. As Chairman, I challenge each Member of the Agriculture Committee to view all policies through the lens of science, technology, and innovation, and identify forward-looking solutions throughout our work.

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The challenges facing production agriculture are many. However, I believe one of the few silver linings—maybe the only silver lining—of the coronavirus pandemic is Americans' heightened awareness of the importance of a reliable, domestic food supply and the producers who provide it.

As Members of the House Committee on Agriculture in a farm bill reauthorization cycle, it is our mandate to fully understand these challenges and work diligently and without partisanship to ensure the passage of a strong farm bill that addresses the issues highlighted today.

Thank you to the witnesses appearing here before us today. I look forward to your testimony.

And regardless of the challenges, it is time to retire our dress shoes and put on the work boots. We have a lot of work to do, and I will need every one of you at the table to help us deliver a farm bill for the backbone of this country—the American producer.

The CHAIRMAN. And before I recognize the Ranking Member, I would like to note the addition of four returning Democratic Members who were added to the Committee roster yesterday evening, Representatives Pingree, Carbajal, Craig, and Soto. I am excited to have all four of you back. Thank you for your commitment to do that.

And with that, I would now like to welcome the distinguished Ranking Member, the gentleman from Georgia, Mr. Scott, for any opening remarks that he would like to give.

**OPENING STATEMENT OF HON. DAVID SCOTT, A
REPRESENTATIVE IN CONGRESS FROM GEORGIA**

Mr. DAVID SCOTT of Georgia. Thank you. And I would like to begin my comments by congratulating Chairman Thompson as we start the 118th Congress, and how proud I am of the bipartisan work that our Agriculture Committee did last Congress. We brought in Agriculture Secretary Vilsack to discuss the state of the farm economy in January of 2022 and followed that with 19 farm bill review hearings with stakeholders and other Administration officials. We also held five listening sessions all across the country, and we got input from farmers and consumers about how our farm bill programs are working for them.

In addition, we have an online feedback form, which is still open and can be accessed on the House Agriculture Committee's website for both Democratic and Republican feedback.

And through those hearings, we have been able to get regular updates on what is happening on the ground and the needs of our farmers, ranchers, and foresters and what we must do to make sure we get the farm bill right for all producers across the country and to ensure we are also tending to our Congressional oversight responsibilities.

This hearing today broadly refers to uncertainty, inflation, and regulations as the challenges producers are experiencing. And as we discuss these important issues and get input from the witnesses today, I encourage each of my fellow Committee Members, both Democrats and Republicans, to place these problems in their proper context. We are still feeling the impacts of the pandemic on our supply chains. The COVID-19 pandemic disrupted manufacturing across the globe and exacerbated labor shortages right here at home.

And President Biden's Administration has taken important actions to address these issues. For example, President Biden signed the Ocean Shipping Reform Act (Pub. L. 117-146) last year, and that helped avert a nationwide rail crisis. And the President worked with us here in Congress to pass two historic pieces of legislation, the bipartisan Infrastructure Investment and Jobs Act (Pub. L. 117-58), which included more than \$2.9 billion for USDA's rural broadband programs, for water storage, and a new byproduct pilot program. And that was followed by passage of the Inflation Reduction Act (Pub. L. 117-169), which made historic investments in rural America to help our farmers and rural communities mitigate climate change and continue to lead the way on renewable energies. These investments in infrastructure in our farm bill and forestry programs will pay dividends for farmers well into the future.

And we have also seen how these international conflicts continue to reverberate throughout our economy. Former President Trump's trade war with China was devastating to many American producers and domestic manufacturers. And more recently, this Russian invasion of Ukraine has had significant impacts on fertilizer, grain, and fuel costs. And, ladies and gentlemen, many people may not know, but Russia at that point was containing and providing 60 percent of all the fertilizer in the world.

The cause of inflation is not singular in nature. It is the result of a variety of factors. And with that in mind, we should also strive

to focus on the issues that are within the House Agriculture Committee's jurisdiction so that we can be the most impactful in our work ahead for our great nation in this important, vitally important to every single American, our agriculture system. I yield back and thank you.

The CHAIRMAN. Well, I thank the gentleman. I am looking forward to our continuing work together here.

Mr. DAVID SCOTT of Georgia. Yes, indeed.

The CHAIRMAN. The chair would request that other Members submit their opening statements for the record so the witnesses may begin their testimony and to ensure that there is ample time for questions.

[The prepared statement of Mr. Miller of Ohio follows:]

PREPARED STATEMENT OF HON. MAX L. MILLER, A REPRESENTATIVE IN CONGRESS
FROM OHIO

Agriculture is the number-one contributor to Ohio's economy. The state has more than 77,800 farms, about ½ of which have livestock production. Farming also provides one out of seven jobs in Ohio, and the Buckeye State ranks among the top ten in the nation in number of farms.

However, Ohio and U.S. farmers continue to face economic uncertainty due to unprecedented inflationary input costs, diminishing trade opportunities, and an ever-increasing regulatory framework at a time when our nation's agriculture producers are called on to meet global food insecurities.

Washington, D.C. has made life infinitely more difficult for Ohio's farmers—overburdensome regulations, spiraling crop input costs, and lowered trade outlook has made it more difficult to own and operate farm operations in my Congressional district and around the country.

The U.S. Department of Agriculture, in its February 2023 *Projections for Agriculture*¹ underscored these concerns, "Global economic and market circumstances continue to challenge the U.S. agriculture sector. Persistent inflation, severe weather events, supply chain disruptions, high input costs, and Russia's war against Ukraine continued to pressure commodity prices." Concluding, "Prices for all crops are forecast to decline starting in 2023/24 for several years."

In addition, USDA has projected U.S. total agricultural exports will decrease 8% over the next 10 year period—causing more uncertainty and strain on our nation's farm community. According to economists at Ohio State University (OSU), inflation and high food costs can have an impact on U.S. agricultural trade, as when commodity input costs rise and food prices increase, trading partners 'pull-back' purchasing, therefore reducing U.S. trading opportunities for U.S. farmers .

The noted Ohio State economist² concluded, "The main issue for U.S. farmers in that while commodity prices may have been high, input prices are putting a lot of pressure on the bottom line of farmers. Global events such as the war in Ukraine and resulting tightening fertilizer supplies have had a dramatic impact, as while commodity prices have doubled, fertilizer costs have quadrupled, and volatile fertilizer increases do not show signs of softening."

Furthermore, access to natural gas, a key feedstock and energy source for nitrogen fertilizer, has been reduced in Europe as well as in the U.S., and fertilizer freight issues continue to inhibit farmers' access. As a result, according to OSU Extension officers, farmers may not be able to apply the appropriate amount of fertilizer as advised, and it will lessen yield, reduce income to farms, and result in tightened food supplies.

Inflation is driving up the price of groceries in Ohio, increasingly pinching Ohioans budgets. So it is not just farmers who are suffering from spiking food prices—

¹U.S. Department of Agriculture (USDA) *Projections for Agriculture 2023–2032*, † February 15, 2023 (<https://www.usda.gov/sites/default/files/documents/USDA-Agricultural-Projections-to-2032.pdf>).

* **Editor's note:** references annotated with † are retained in Committee file.

²Dr. Ian Sheldon, Chair of Agricultural Marketing, Trade and Policy Ohio State University, Ohio Farm Bureau Podcast, † January 2023 (<https://soundcloud.com/ohiofarmbureau/podcast/ep-002-inflation-and-energy-watch-outs-for-ag>).

as U.S. families and those in the Buckeye State have suffered as USDA reports³ food-at-home prices increased by 11.4 percent in 2022—with costs continuing to rise 7.1 percent thus far in 2023.

OSU Extension experts note that inflation can affect crop production in a number of ways. For the producer, it can increase the costs of inputs such as seeds, fertilizers, and labor, which can reduce farmers' profit margins and make it more difficult for them to invest in new technology or expand their operations. For the consumer, inflation can lead to higher food prices, which can reduce consumer demand for agricultural products and hurt farmers' production and sales. This can also increase the cost of living for farmers and rural communities.

Faced with these mounting pressures, farmers in Ohio and across the country are bracing for a substantial drop in farm income, which USDA⁴ projects to decrease by 17.8 percent in 2023. After 2 strong years of growth, U.S. farm income is forecast to drop substantially in 2023 as commodity prices fall and expenses rise, and with food prices projected to rise into 2023. The *Ohio Capital Journal* concluded, "*The nation's producers will not be reaping the financial benefits.*"⁵

Federal regulations also have a direct impact on farmers and ranchers, and over the years, the breadth and extent of that regulatory landscape have increased dramatically. Farmers and ranchers in my District also are certainly challenged on the regulatory front. While farm bill programs such as conservation programs crop insurance and provide valuable tools—producers continue to confront numerous regulatory challenges.

I was glad to join a bipartisan resolution sponsored by the Chairman of this Committee calling for commonsense resolution of the *Waters of the U.S. Rule*, which provides an unworkable test for jurisdiction of when the Federal Government regulates farms and ranchers, and creates uncertainty for agriculture as they work to sustain vital conservation resources.

I am heartened by efforts such as the *Ohio Agriculture Conservation Initiative* (OACI), a partnership in my state between agriculture, conservation, environmental and research communities to recognize farmers for their dedication to advancing methods that improve water quality in Ohio and increasing the number of farm best management practices. Farmers have a commitment to the preservation of natural resources and maintaining the land for future generations, and I look forward to working with this Committee on the farm bill to ensure access to sound conservation practices.

The many challenges facing Ohio and U.S. farmers, as highlighted in recent USDA official forecasts, remain a concern, "*Economic growth continues to contract as high levels of inflation persist worldwide, lower growth in China, and negative ramifications from Russia's war against Ukraine materialize in high food and energy prices and lower global trade . . . painting a gloomier economic outlook for the near future.*"

However, I remain committed to working with farmers and ranchers in my Congressional district, along with Members of this Committee, to make a meaningful difference in the upcoming farm bill to promote and sustain vital agriculture production in our nation.

The CHAIRMAN. Let me introduce our witnesses. We have a very experienced, talented, and diverse panel of witnesses today as we look at the landscape in which the American producers have to work in today. This is a great, great hearing to help guide us in our farm bill as we develop the farm bill.

So our first witness today is Mr. Zippy Duvall, President of the American Farm Bureau Federation. Our next witness is Mr. Peter Friedmann, who is the Executive Director of the Agriculture Transportation Coalition. Our third witness today is Mr. Corey Rosenbusch, the President and Chief Executive Officer of The Fertilizer Institute. Our fourth witness today is Mr. Michael T. Twinning, who is the Vice President of Sales and Marketing for Willard

³USDA *Food Price Outlook*, † February 23, 2023 (<https://www.ers.usda.gov/data-products/food-price-outlook/>).

⁴USDA *Projections for Agriculture 2023–2032*, † February 15, 2023.

⁵**Editor's note:** the article referred to is retained in Committee file; in entitled, *USDA projects farm income will fall in 2023 after 2 robust years*, dated Feb. 8, 2023, and is available at <https://ohiocapitaljournal.com/2023/02/08/usda-projects-farm-income-will-fall-in-2023-after-two-robust-years/>.

Agri-Service. And our fifth witness today is Mr. Mike Brown, President of the National Chicken Council. Our sixth and final witness today is Rob Larew, who is the President of the National Farmers Union.

Thank you to all of our impressive witnesses for joining us today, and we are now going to proceed to your testimony. You each have 5 minutes. The timer in front of you will count down to zero, at which point your time has expired, and we would ask that you wrap up whatever thought that you are at that point. And thank you for your written testimony that you have submitted, which all Members have in front of them.

So, Mr. Duvall, please begin when you are ready.

**STATEMENT OF VINCENT “ZIPPY” DUVALL, PRESIDENT,
AMERICAN FARM BUREAU FEDERATION, WASHINGTON, D.C.**

Mr. DUVALL. Well, thank you, Mr. Chairman. And thank you, Ranking Member Scott, from my home state and my good friend, and other Members of the Committee. And I want to begin by thanking all of you for the work that you do for the American farmer and rancher.

The country that cannot feed its people is not secure, so the strong foreign policy that supports a strong food system truly is part of a smart national security strategy. There are certainly plenty of challenges for American agriculture, from losses experienced in a trade war with China, to the pandemic lockdowns, to the supply chain disruptions. Add to that a record high supply cost and you see how farmers and ranchers have faced unprecedented volatility in recent years.

USDA’s most recent Farm Sector Income Forecast sees a decrease in net farm income in 2023 down 15.9 percent. Adjusted for inflation, that is an 18 percent drop. The same report estimates that farm/ranch production expenses will continue to increase by \$18 billion. That follows a record increase of \$70 billion in 2022. Short- and long-term interest rates are also high and rising double and triple of what it was just a year ago. And if we remember the high interest rates caused by the high inflation and the Fed stepping up to address inflation led to a farm debt crisis in 1980s. We need to be sure that the doubling and tripling of interest rates does not cause similar pressures on our farmers.

I am especially concerned about our beginning farmers, those that are forced to borrow for succession planning, and other farmers who have made recent new investments.

Affordable, reliable, abundant energy is critical to farmers and ranchers. Energy is necessary for all farm production, and we continue to ride a rollercoaster ride of high energy and input costs. But along with the challenges, there are humongous opportunities ahead for agriculture. Innovation and research are helping us do more with less. Our advances in sustainability are truly impressive. But in order to seize the opportunities ahead and continue achievements, we need a strong foreign policy. We need a supportive regulatory environment. The Federal regulations have a direct impact on farmers and ranchers. Today’s farmers and ranchers face a flurry of requirements and challenges: the new *Waters of the U.S.* rule, the Endangered Species Act, access to important crop

protection tools, immigration and labor regulations, and now agencies such as the SEC imposing on our farmers and ranchers new climate regulations that are meant for Wall Street. Much uncertainty remains related to the ability of farmers and ranchers to access affordable supplies and deal with the regulatory and weather-related challenges.

Expected revenue decline has more than erased the gains that we made during 2022, so it becomes more and more important for farmers to have clarity on rules that impact their business and ability to operate. Growers need to have access to comprehensive risk management options. They deserve a resounding voice during formulation of vital legislation such as the farm bill, and the farm bill is a critical tool that ensures our nation's food supply remains secure.

Farm Bureau supports the following principles to guide development of programs in the next farm bill. We want to increase the baseline funding commitments on farm programs. We want to maintain a unified farm bill that includes nutrition programs and farm programs together. And we want to prioritize the funding for risk management tools, which include both Federal crop insurance and commodity programs. The 2023 Farm Bill presents an important opportunity for lawmakers to rise above partisanship.

I urge you to work together again to pass legislation that protects the food security for all Americans and ensures the future success for our farmers and ranchers. Farm bill will stand against the threat of long-term resiliencies of our rural communities. For your part, Congress must protect American agriculture and modern production practices from undue burdens. Farmers and ranchers are the highest and most trusted profession in America. I ask Congress to trust farmers and ranchers, too, and respect the ability to innovate and solve problems. We are committed to doing the right thing and appreciate the support of this Committee.

And thank you, Mr. Chairman, for holding this hearing today, and I look forward to the questions from you in just a little while. Thank you.

[The prepared statement of Mr. Duvall follows:]

PREPARED STATEMENT OF VINCENT "ZIPPY" DUVAL, PRESIDENT, AMERICAN FARM BUREAU FEDERATION, WASHINGTON, D.C.

Mr. Chairman and Members of the Committee, my name is Zippy Duvall. I am a third-generation farmer and President of the American Farm Bureau Federation, and I am pleased to offer this testimony on behalf of the American Farm Bureau Federation and Farm Bureau members across this country.

There are certainly plenty of challenges for American agriculture. Beginning with losses experienced from the trade war with China, pandemic lockdowns, supply chain disruptions, and record-high input costs, farmers and ranchers have been facing unprecedented volatility in recent years. Recognizing that other witnesses might cover some of these challenges more in-depth, I want to briefly highlight market uncertainties, energy affordability and potential regulatory burdens that will have an impact on farmers, ranchers and our rural communities.

While there are challenges, I remain optimistic for the future of American agriculture. Through science, technology and innovation and the get-it-done attitude of rural Americans, no challenge has been too great. But we also must make sure that farmers and ranchers have the tools necessary to succeed, including support from good public policy and strong markets both domestically and abroad.

Uncertainty

USDA's most recent *Farm Sector Income Forecast*,¹ released Feb. 7, sees a decrease in net farm income in 2023. U.S. net farm income, a broad measure of farm profitability, is currently forecast at \$136.9 billion, down 15.9% from 2022's \$162.7 billion. This \$25.9 billion decline erases the \$21.9 billion increase that was forecast between 2021 and 2022. Adjusted for inflation, 2023 net farm income is expected to decrease even more: \$30.5 billion (18.2%). The report expects farm and ranch production expenses to continue to increase by \$18.2 billion (4.1%) in 2023 to \$459.5 billion, following a record increase of \$70 billion in production expenses in 2022.

The largest decrease in net farm income is tied to a projected fall in cash receipts from livestock due to lower prices for all major categories except cattle. The value of livestock production (in nominal dollars) is expected to decrease nearly 6%, or \$14.7 billion, in 2023. Chicken eggs and milk are responsible for the largest percentage decreases, with cash receipts for chicken eggs projected to decrease by \$4.9 billion or 24%. Highly pathogenic avian influenza has affected over 52 million birds in commercial flocks in the U.S., including over 43 million egg layers, pressuring supplies and pushing up prices. As the flock recovers, egg production increases and consumer demand fundamentals recalibrate prices lower. Milk receipts are similarly expected to decline \$8.4 billion (14.6%) on expectations for higher milk production and lower corresponding prices.

Cash receipts for cattle and calves are estimated to increase by \$2.1 billion or 2.4%; but this is because drought conditions in the West and southern Plains have damaged pastures and led to higher costs for feed such as hay. This has resulted in many farmers marketing heifers that would typically be kept for breeding and herd replacement, resulting in a reduction in U.S. cattle inventory that will continue for years. Tighter cattle supplies have pulled both cash and futures prices higher, leading to continued growth in cash receipts and marketing of cattle.

On the crops side, receipts for many major row crops like corn and soybeans are expected to decline, though wheat and hay are expected to increase. Receipts for corn are expected to fall by 4.5% (\$4.1 billion), while soybeans are expected to be down 8.1% (\$5.2 billion). Wheat is expected up 4% (\$0.6 billion) and hay receipts are expected to grow by \$0.6 billion (6.1%). Fruits and nuts are expected to hover close to \$30.8 billion in receipts, while vegetables and melons are poised to fall from \$21.8 billion to \$19.9 billion (−8.6%). The vast majority of expected receipt declines are linked to falling prices rather than volume dynamics.

Weather and climate conditions will have strong impacts on the true outcome of this year's price outlook. Extreme drought that has pushed up hay and wheat prices could subside marginally after a winter of strong (so far) Western precipitation and snow. Record corn and soybean production in exporting countries like Brazil and Argentina are competition for U.S. crops overseas, particularly in the China market. Uncertainty related to Mexico's commitment to ban GMO corn for human consumption and the ongoing *Ukraine-Russia*² conflict remains.

On the cost side, production expenses, including operator dwelling expenses, are forecast to increase for a sixth consecutive year, growing in 2023 by \$18.2 billion, or 4.1%, to reach a record \$459.5 billion. And while it's little consolation, some major input items such as cumulative feed costs, fertilizers and fuels and oil are expected to decline from record highs. Feed costs, which represent the largest single expense category, are expected to decline \$3.92 billion to \$72.66 billion (−5%). Fertilizers, lime and soil conditioners are expected to decrease \$1.25 billion, or 3%, from \$43.42 billion to \$42.17 billion. Typically, fertilizers represent about 15% of a crop farmer's costs and any increase, regardless of magnitude, can be crushing for some producers, especially in times of declining revenue. Fuels and oils are expected to experience the largest percent decline—17%—from 2022, moving from \$20.25 billion to \$17.1 billion. These drops, however, are easily outpaced by increases in other expense categories including marketing, storage and transportation, which are forecast to increase 11%. Labor costs are expected up across all subcategories, with cash labor forecast to move from \$39.2 billion to \$42.08 billion (+7%). Inflation, currently sitting at 6.5%, remains a source of uncertainty and is eroding asset values; and interest expenses have increased as the Federal Reserve Bank attempts to bring inflation under control through higher rates. Between 2022 and 2023, interest expenses, including operator dwellings, are expected to jump 22%, going from \$27.6 billion to \$33.84 billion, making it more difficult for farmers and ranchers to acquire lines of credit to purchase inputs and equipment this year. Livestock, seed, elec-

¹<https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/farm-sector-income-forecast/>.

²<https://www.fb.org/market-intel/ukraine-russia-volatile-ag-markets>.

tricity, repair and maintenance are among the other categories expected to increase in price.

Other farm income, which includes things like income from custom work, machine hire, commodity insurance indemnities and rent received by operator landlords, is estimated to increase by \$3.2 billion, or 8%, from \$42 billion to \$45.2 billion in 2023. But when all these factors are accounted for, the resulting expectations for net farm income decline become apparent.

USDA's Farm Sector Income Forecast also provides expectations of farm financial indicators that provide insight into the overall financial health of the farm economy. During 2023, U.S. farm sector debt is projected to increase \$31.19 billion, or 6.2%, to a record \$535 billion in nominal terms. Nearly 70% of farm debt is in the form of real estate debt, for the land to grow crops and raise livestock. Real estate debt is projected to increase \$26.79 billion to a record-high \$375.8 billion, largely due to an *increase in land values*³ across the country. Non-real estate debt, or debt for purchases of things like equipment, machinery, feed and livestock, is projected to increase by \$4.4 billion to a record \$159.1 billion. The value of assets regularly being purchased with debt is rising, which means it will continue to be important for farmers and ranchers to pay down debt and cover interest to maintain a healthy balance sheet, an endeavor that will be even more cumbersome within a high interest environment.

Based on 2023 debt and asset levels, USDA expects the debt-to-asset ratio to be 13.22% for 2023, which sits marginally below the prior 5 year average (13.5%), meaning farmers are expected to hold steady on borrowing to finance the purchase of assets. Higher interest rates will likely act as a barrier for farmers to finance new assets, and will then likely drive down the value of these assets over the next couple of years.

Working capital, which takes into consideration current assets and liabilities, is the amount of cash and cash-convertible assets minus amounts due to creditors within 12 months. In 2023, working capital is projected to fall by \$14.9 billion, or 8.9%, to \$118 billion, which is the first decline since 2016, and sits at \$2.5 billion below 2014 levels, when farmers and ranchers held \$121 billion in working capital. Lower levels of working capital often suggest that many U.S. farmers have just enough capital to service their short-term expenses and debt, which becomes more difficult as interest rates rise.

Inflation

Short- and long-term interest rates are also high and rising. In recent years, interest expense has been about 5% of farm cash production expenses. Farmers will be facing interest rates double and triple what they were just a few years ago, with corresponding increases in interest expense; high interest rates, caused by both high inflation and the Fed's steps to address inflation, led to the farm debt crisis in the 1980s. A doubling or tripling of interest expenses now could cause similar pressures, especially for any farmer already committed to new investments, beginning farmers or farmers forced to borrow for succession. If history is a guide, it could take years for long-term interest rates to come back down to where they were for the last decade.

Higher interest rates tend to lower property values, including farmland values, which would make worse the debt trap of higher interest rates and lower farm returns. Rising interest rates will raise the cost of all debt, including government debt, which will ultimately cost the taxpayer and limit the government's flexibility to provide assistance in a debt crisis. Inflation is slashing the purchasing power of American consumers, and weakening the economy, which both undercuts demand for farm products and lowers prices. Inflation undermines the real value of USDA programs, including the value of reference prices and budgets for most commodity programs.

The aggressive interest rate increases by the Fed are making the dollar attractive to foreign investors and strengthening the dollar, which undermines U.S. agricultural export competitiveness. A Fed-driven recession in the U.S. is bad for the global economy, which will also undermine U.S. agricultural exports.

Energy

Affordable and abundant energy is critical for farmers and ranchers as it is a major factor for input costs. The price of crude oil is the main factor in the price of diesel fuel and gasoline, and fluctuations in the crude oil market greatly influence changes in prices.

³ <https://www.fb.org/market-intel/farm-inputs-u.s.-agricultural-land-values-show-record-increase>.

On March 8, President Biden announced a ban on U.S. imports of petroleum, coal and natural gas from Russia in response to Russia's further invasion into Ukraine. The ban includes crude oil and petroleum products. It was well reported at the time that in 2021, imports from Russia only accounted for 3% of the U.S.'s crude oil imports. However, less discussed is that Russia accounted for a 20% share of U.S. imports of petroleum products in 2021. Petroleum products, namely unfinished oils and fuel oil, are used by the U.S. as a supplement to crude oil in the refining process. According to the U.S. Energy Information Administration (EIA), a substantial share of the unfinished oils from Russia was used as a supplementary refinery input and has qualities similar to a heavier, relatively high-sulfur crude oil. These higher-sulfur oils are heavily used in the production of diesel fuels.

U.S. imports of distillates (a category of petroleum distillation fractions that includes primarily diesel fuel and fuel oil) were lower in 2021–2022, relative to 2020–2021. Additionally, U.S. exports of distillates are higher in 2021–2022, relative to 2020–2021. Russia's invasion of Ukraine has had significant impacts on global markets for crude oil and petroleum products, not just U.S. markets. These disruptions have created unusual marketing opportunities for producers of oils and fuels and resulted in some unusual product flow. The result for the U.S. diesel market is a net decrease in distillate trade, further tightening U.S. supplies.

Beyond the impact of Russia, since 2019, diesel production capacity has dropped by about 180,000 barrels per day. This is equivalent to about 4% of current diesel production. Effectively, this means that the price of diesel fuel—upon which farmers rely very heavily to run equipment and to bring their supplies in and to ship their products out on rail, truck and barge—have stayed high, even as gasoline prices have moderated.

Farm Bureau strongly supports the development of a national energy policy that provides for increased exploration and use of domestic energy resources. In addition, Farm Bureau advocates policies that will create a diverse, domestic energy supply to fuel America's economic growth and prosperity while strengthening our energy security. Further development and use of renewable energy sources such as ethanol, biodiesel, renewable diesel, biomass, solar and wind are critical to our nation's energy future and will help further strengthen the overall national security of the United States.

Regulations

All Americans have an interest in a regulatory process that is transparent and fact-based, respects the will of Congress, and observes the separation of powers in the Constitution. Federal regulations have a direct impact on farmers and ranchers, and over the years, the breadth and extent of that regulatory landscape have increased. AFBF has taken a stand against regulatory overreach and is working to reform the Federal regulatory process and preserve farmers' and ranchers' land-use and water rights.

Today, farmers and ranchers are faced with a flurry of requirements through the Clean Water Act, the Endangered Species Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Food Safety Modernization Act, immigration and labor regulations, and interpretation of the Federal Land Policy and Management Act—to name just a few.

Often, these requirements are the result of Federal regulations; sometimes they emanate from court decisions. But no matter how they are established, the result often can be controversial. Stakeholders can disagree on the language in the statute, and affected parties can also disagree on the science, the data or the models underpinning one or the other.

Farm Bureau strongly believes that all Americans, including farmers and ranchers, need a regulatory system that is fair, transparent, adheres to the will of Congress, takes economic impacts into account and respects our freedoms.

WOTUS

The EPA and the U.S. Army Corps of Engineers have finalized a new *Waters of the United States (WOTUS)* rulemaking that repeals the Navigable Waters Protection Rule, doubles down on the unworkable "significant nexus test" and creates more complicated, overreaching regulations.

The new rule greatly expands the Federal Government's regulatory reach over private land use because it allows it to regulate ditches, ephemeral drainages and low spots on farmland and pastures. This could impact everyday activities such as plowing, planting and fence-building in or near these areas.

This rulemaking brings us further away from the clarity and predictability achieved by the Navigable Waters Protection Rule. This is important for farmers and ranchers because the penalties for non-compliance are significant. A simple mis-

judgment by a farmer in determining whether a low spot is or isn't subject to the regulation can trigger substantial civil fines as well as criminal penalties.

Farmers and ranchers care about clean water and preserving the land, both of which are essential to producing healthy food and fiber and ensuring future generations can do the same. That's why we supported the Navigable Waters Protection Rule. Farmers play a leading role in protecting our nation's wetlands and unfortunately, the new WOTUS rule could prevent farmers from incorporating beneficial conservation practices into their operations. Farmers and ranchers often take on projects that provide stormwater management, wildlife habitat, flood control, and nutrient processing and improve overall water quality in uplands and ephemeral features. But, if they cannot do this without applying for a Federal permit, it may be cost-prohibitive, resulting in environmental degradation, not protection. Additionally, over the last 15 years, the number of acres enrolled in wetland and buffer practices under the Conservation Reserve Program has more than doubled (from 2.5 million acres to 5.3 million acres). In addition, more than 140 million acres of U.S. farmland are used for voluntary conservation efforts and wildlife habitats—an area equal to the states of California and New York combined. Finally, farmers advocate for and support commonsense rules that don't require a team of consultants and lawyers to navigate.

Endangered Species Act

Preserving natural surroundings for America's wildlife has long been a priority for America's farmers and ranchers. Today, Americans have a growing understanding of and appreciation for wildlife conservation. There are countless examples of effective voluntary conservation programs and practices that are being implemented at the state and local level. However, the Endangered Species Act (ESA) is long overdue for a meaningful update that recognizes these voluntary efforts to restore and enhance habitats.

Endangered and threatened species protection can be more effectively achieved by providing incentives to private landowners and public land users rather than by imposing land use restrictions and penalties. We must all be good stewards of our natural resources and wildlife habitats.

Farm Bureaus across the country have played a leading role in education, outreach and goal setting to protect at-risk species such as the monarch butterfly and lesser prairie chicken. Unfortunately, ESA listings often entangle farmers and ranchers in bureaucratic red tape rather than providing a path to achieve shared conservation goals.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) was enacted in 1970, designed to ensure that environmental impacts are considered in proposed agency decision-making. NEPA's requirements apply to a broad range of actions affecting the daily lives of Americans across the country. From the construction of roads, bridges, highways, transmission lines, conventional and renewable energy projects, broadband deployment, and water infrastructure to management of activities on Federal lands, such as grazing, forest management, and wildfire protection to environmental restoration and other projects. We support the over-riding goal for better environmental decisions in a cost and time-efficient manner.

However, Farm Bureau members have experienced significant delays in obtaining and renewing Federal grazing permits as well as securing timber sale contracts with many averaging over 7 years to complete. In some cases, NEPA reviews have taken a decade or more to complete, and often get caught in a cycle of litigation. Farm Bureau policy supports immediate simplification, improvement, and streamlining of NEPA. NEPA, and its implementing regulations, should reflect current technologies, agency practice, eliminate obsolete provisions, and improve the format and readability of the regulations while reducing unnecessary paperwork and promoting better decision-making consistent with NEPA's statutory requirements. We encourage Congress to update this decades-old law.

Crop Health

Protecting our sustainable food supply starts with protecting crops while they are still in the ground or on the tree or vine. To that end, farmers and ranchers rely on a variety of tools and techniques as they grow the crops that will become our food, fiber and renewable fuel. Specific methods of crop protection vary from farm to farm based on regional climate and specific threats to crops, such as weeds, pests and invasive species. Crop protection tools, like herbicides, also enable environmentally beneficial practices such as reduced- or no-till, which sequester carbon and promote healthy soils. Additionally, it's critical farmers have access to a variety of pesticides to ensure the most effective product can be used for the targeted pest and

prevent resistance issues. Above all, safety is the top priority for farmers when using any kind of pesticide, and thanks to advances in technology, farmers can be precise in their applications, down to the individual plant.

Farmers need access to affordable and effective crop protection chemistry, but this is threatened by the push to regulate pesticides in ways that directly contradict decades-long science-based conclusions from the EPA. We need legislative clarity that acknowledges states have the right to build on the Federal Government's baseline regulations but limits their ability to directly contradict the scientific findings and rigorous review process of the experts at the EPA.

Labor

Farmers and ranchers need a reliable, skilled workforce. Farm work is challenging, often seasonal and transitory, and with fewer and fewer Americans growing up on the farm, it's increasingly difficult to find American workers attracted to these kinds of jobs. Not all farm jobs can be replaced by machines. There are certain farm jobs, like tending livestock and pruning or picking fresh produce, that require a human touch. Where American workers are unwilling or unavailable, workers from other countries have provided crucial support to American agriculture.

Congress needs to pass responsible immigration reform that addresses agriculture's current experienced workforce and creates a new flexible guest worker program. Instability in the agricultural workforce places domestic food production at risk—increasing immigration enforcement without also reforming our worker visa program could cost America \$70 billion in agricultural production.

Grain Inspection, Packers, and Stockyards Administration

The Packers and Stockyards Act was enacted in 1921 and prohibits unfair, deceptive, and unjust discriminatory practices by market agencies, dealers, stockyards, packers, swine contractors, and live poultry dealers in the livestock and poultry industries. Farm Bureau has long advocated for remedies that provide fairness and transparency for poultry growers, while maintaining provisions that keep hog and cattle markets flexible and competitive.

Dairy

Modernizing our Federal Milk Marketing Order system is an important step to provide dairy farmers with confidence in how their milk is priced in today's market environment. In the 2018 Farm Bill, a Class I formula change resulted in nearly \$750 million less in the Federal Order pool during COVID-19 market disruptions, meaning lower checks for many farmers across the country. In 2021, the latest data point available, for each \$27.50 per hundredweight spent, dairy farmers received only \$21.23, a loss of \$6.27 per hundredweight. It is essential that adjustments are made both legislatively and through the Federal Order hearing process to ensure the system works fairly for all dairy farmers. Switching back to the higher-of Class I pricing formula in the most expedient manner possible is necessary to provide farmers with more price certainty.

Make allowances, a fixed deduction from each milk product formula used to offset processing costs, are expected to be a primary topic for dairy industry stakeholders to consider in future Federal Order discussions. Currently, make allowances can be changed using information from voluntary cost of processing surveys taken by different researchers across the country. Voluntary participation means some processors may be left out when establishing data points stakeholders then use to formulate milk checks, potentially skewing dairy farmers' checks negatively. Mandatory processing cost surveying would provide farmers the assurance that any make allowance increase reflects true costs borne by processors. This will have to be done legislatively as USDA does not have the power to authorize without Congress. Other priorities include a switch to modified bloc voting during the Federal Order hearing process, which would give farmers the opportunity to vote independently and confidentially if they so desire. Milk check transparency and uniformity can help provide farmers with clarity and confidence in how they are being paid.

Securities and Exchange Commission Climate Disclosure Regulations

In March 2022, the Securities and Exchange Commission (SEC) proposed a rule requiring public companies to include climate-related disclosures in their financial statements. Notably, the rule would necessitate the disclosure of the public companies' "Scope 3" emissions, indirect emissions from upstream and downstream activities in their supply chains.

The rule applies throughout a publicly traded company's value chain, burdening all agricultural producers, particularly small- and mid-sized farm operations.

The Scope 3 emissions reporting requirement could impact most farms since a majority of agricultural products are used or sold by a publicly traded company. Nine-

ty-eight percent of all farms in the U.S. are independent, family operations that do not have the resources to track and report the emissions data necessary to meet the disclosure requirements. The increased production costs and difficulty in supplying emissions data to public companies will hinder our ability to compete in global markets and will encourage further market consolidation and vertically integrated supply chains.

Farmers and ranchers already comply with expansive legislative and regulatory directives that exist at the local, state and Federal levels. The SEC's proposed rule seeks to further extend regulatory burdens on farmers and ranchers, all while lacking appropriate statutory authority. In fact, Congress has been very clear that agencies may not require mandatory reporting of greenhouse gas emissions from livestock.

The SEC's primary purpose is to enforce the law against market manipulation and fraud. However, this rule moves well beyond its traditional regulatory authority by mandating climate change reporting requirements that will not only regulate publicly traded companies but will impact every company in the value chain. More importantly, this rule could require public companies to force farmers and ranchers to report personal information and business-related data, raising serious privacy concerns. In this capacity, the SEC would be granted unprecedented jurisdiction over America's farms and ranches, potentially creating onerous compliance requirements for even small farms and ranches with few or no employees.

Farmers and ranchers have never been subjected to SEC oversight and, in fact, no company involved in agricultural production for crops or livestock is a registrant with the SEC. Unlike the large corporations the SEC presently regulates, family farms and ranches do not have teams of compliance officers or access to the financial resources compliance would require.

Farmers and ranchers have been on the forefront of climate mitigation efforts from the very beginning, working on conservation stewardship efforts and *decreasing their greenhouse gas emissions*⁴ through voluntary efforts. This rule could undermine that progress and force mandates that could eliminate many farms and ranches. If the SEC does not take into consideration these concerns in their final rule, farmers and ranchers will be looking to Congress to intervene. One way to do that is to pass H.R. 1018, the Protect Farmers from the SEC Act.

Conclusion

Much uncertainty remains related to the ability of farmers and ranchers to cost-effectively access inputs and deal with regional regulatory and weather-related challenges. With an early expectation of revenue declines, which more than erase gains made during 2022, it becomes all the more important for producers to have clarity on rules that impact their businesses' ability to operate, for producers to have access to comprehensive risk management options and for producers to be given a resounding voice during formulation of vital legislation such as the farm bill, which can either complicate or streamline farmers' and ranchers' ability to contribute to a reliable and resilient U.S. food supply sustainably.

The farm bill is a critical tool for ensuring our nation's food supply remains secure. No one buys insurance for the good times, and similarly, farm bill programs provide critical tools to help farmers and ranchers manage risk. Farm programs are written to provide a basic level of protection to help offset bad economic times and severe weather. The 2018 Farm Bill brought certainty to farm and ranch families through crop insurance, improved risk management programs and support for beginning farmers and ranchers, while also providing much-needed funding for trade development and ag research.

As you can hear from my testimony, farming is a difficult and risky business, yet critical to the well-being of our country. It's often stated that food security is national security. Few pieces of legislation are more significant than the farm bill when it comes to ensuring our food system is secure. We urge lawmakers to recognize this significance as they consider updating and improving the farm bill.

Farm Bureau supports the following principles to guide development of programs in the next farm bill:

- Increase baseline funding commitments to farm programs;
- Maintain a unified farm bill that includes nutrition programs and farm programs together; and
- Prioritize funding for risk management tools, which include both Federal crop insurance and commodity programs.

⁴ <https://www.fb.org/market-intel/2020-epa-emissions-inventory-demonstrates-agricultures-advancements-in-sust>.

The farm bill has been a bipartisan effort in the past. The 2023 Farm Bill presents an important opportunity for lawmakers to rise above partisanship and work together again to pass legislation that protects food security for all Americans and the future success of our farmers and ranchers.

Farm Bureau will continue to work to ensure that farm families maintain their ability to feed, fuel and clothe the world and defeat public policy that threatens the long-term resiliency of our rural communities. Congress must protect American agriculture and production practices from undue burden, and respect farmers' and ranchers' ability to innovate and solve problems.

American farm families want to leave the land better than when it was first entrusted to our care. That is the story of my family's farm in Georgia and the story of millions of farms across this country. We want to protect the planet, feed and clothe people, and promote vibrant communities. Working with our partners, land-grant universities, policymakers, and the farmers and ranchers we represent, Farm Bureau intends to continue finding solutions for the challenges of the future.

Mr. Chairman, I commend you for convening this hearing and for all your hard work on behalf of agriculture across the country. I will be pleased to respond to questions.

The CHAIRMAN. Thank you, Mr. Duvall, I appreciate it.
Mr. Friedmann, please begin when you are ready.

**STATEMENT OF PETER FRIEDMANN, EXECUTIVE DIRECTOR,
AGRICULTURE TRANSPORTATION COALITION,
WASHINGTON, D.C.**

Mr. FRIEDMANN. Thank you very much, Mr. Chairman, for holding this hearing. The timing is very important.

A number of years ago, some newspaper called the Agriculture Transportation Coalition the principal voice of U.S. agriculture and agriculture exporters in transportation policy, and we have taken that very seriously. But before I begin, I would like to recognize a couple of Members of your Committee who achieved more for agriculture exports when it comes to transportation than has been achieved in decades and did it last year. Congressman Dusty Johnson and Congressman Jim Costa, together with Congressman John Garamendi, authored the Ocean Shipping Reform Act of 2022, absolutely critical. It is essential. It has already changed the practices, and ocean transportation has changed what the foreign ocean carriers are doing. And I want to thank you, this Committee, and thank you, Congressman Johnson and Congressman Costa, for leading the charge on that, incredible. And as Congressman Scott mentioned something about bipartisan, incredible. It passed the Senate unanimously and it passed here three times overwhelmingly, so thank you very much, really critical.

Why is the transportation so important? It is because there is virtually nothing produced in agriculture or forest products in this country that cannot be sourced somewhere else in the world. If we aren't able to deliver it affordably and dependably to our foreign customers, those foreign customers have other places to go. They will find substitutes, and in the past they have done so. And when they do so, it is very difficult for us, the U.S. agriculture, to get those markets back again. And there are plenty of stories in cotton and soybean and almonds and walnuts and so forth about lost foreign markets because our transportation did not facilitate the flow of affordable, dependable supply.

So let me just say that Federal and state policies can facilitate the flow of commerce, agriculture exports, or they can hinder it. And so I would like to highlight a couple of those. Now, first, I

want to go back to the Ocean Shipping Reform Act because it is still very much in play. You all passed the legislation last year, but now, the Federal Maritime Commission has to implement it. And those entities that were opposed to this legislation, fortunately, unsuccessfully, overwhelmingly defeated, are now trying to undo some of those reforms at the Federal Maritime Commission as it goes through the rulemaking process. Fortunately, the Federal Maritime Commission has five Commissioners, Republicans and Democrats, that are 100 percent aligned and on board with the interests of agriculture exports, as well as importers, exporters, all the American interests, but still, the rulemaking process sometimes provide some access for those who would oppose the legislation to achieve their goals down there. So we really do need this Committee and this Congress to continue to monitor what goes on down there, and we will be back with specifics from time to time as needed.

So that continued engagement is critical. Let me just tell you one of the things it did. The ocean carriers, foreign ocean carriers—and there are only ten of them in the world, we are dependent on ten ocean carriers, all foreign companies, to get all our agricultural products out and the inputs that much of agriculture needs into the country. They have now invested millions of dollars, which they made over the last 2 years, in upgrading all their systems. And it has already provided some evidence. We have seen evidence of that improvement.

We do have more work to do. Truck weights need to be increased. Members of this Committee introduced the SHIP IT Act (H.R. 471, Safer Highways and Increased Performance for Interstate Trucking Act), which increased truck weights to a level that is even closer to what Canada and Europe and all our trading partners do. We have the lowest truck weight limits in the world in some of our states, and in California it creates a barrier to agriculture exports. The lowest truck weight limits in the world, increasing congestion, increasing delay, and increasing emissions. It is almost an embarrassment when you talk to Canadians or any other country.

We need more truck drivers, and there is legislation and pilot projects underway to get more people, young people when they graduate from high school, maybe they want to go into truck driving, they can't now. This will facilitate that. We need more of that.

We do need a resolution of the port longshore labor dispute and the contract negotiations on the West Coast that has been going too long, and we are hopeful, and maybe oversight from this Committee will help because it is causing a shift in transportation services from the West Coast to the East and Gulf Coast.

We do need inland rail depots and really can use your help there because agriculture needs more of those. Thank you very much.

[The prepared statement of Mr. Friedmann follows:]

PREPARED STATEMENT OF PETER FRIEDMANN, EXECUTIVE DIRECTOR, AGRICULTURE
TRANSPORTATION COALITION, WASHINGTON, D.C.

The Agriculture Transportation was established in 1988 to provide a voice for a broad cross-section of U.S. agriculture exporters, importers requiring dependable, affordable ocean, rail and truck transportation services to maintain and grow foreign market share.

Maritime press declared the AgTC as “the principal voice of U.S. agriculture exporters in transportation policy.” Members are primarily ag exporters and import-

ers, also their forwarders, truckers, trade associations, state commodity commissions, Departments of Agriculture.

The AgTC annually conducts Ag Shipper Workshops around the country, culminating in the AgTC Annual Meeting—the nation’s largest annual gathering of ag international transport stakeholders.

Outline of Comments

- 1. We Cannot Take Global Demand for U.S. Agriculture For Granted**
- 2. Role of the Federal Government—Congress, Executive Branch and Agencies**
 - a. U.S. agriculture exporters brought Congress and the Administration together in a bipartisan way in 2022**
 - b. There’s More to Do to Improve the Ag Transport Supply Chain**
 - c. Intl. Shipments to Inland Rail Ramps Requires Federal Regulatory Clarity**
 - d. Infrastructure**
- 3. Agriculture Export Supply Chain is Complex and Fragile—Case Study**
- 4. Conclusion**

1. We Cannot Take Global Demand for U.S. Agriculture For Granted

There is virtually nothing in U.S. agriculture and forest products grown or produced in this country that cannot be sourced or substituted with products from elsewhere in the world; if we cannot deliver affordably and dependably, both our foreign and U.S. customers can, and have proven they will, shift their purchases to those other countries, sometimes permanently. This has in fact occurred periodically, for pork, beef, cotton, almonds, soybeans, fresh fruit, *etc.*

2. Role of the Federal Government—Congress, Executive Branch and Agencies

There is a role for govt. to assure adequate supply of transportation services. Federal and state policies and laws can and do either facilitate the flow of ag commerce, or in a number of states, hinder it.

a. U.S. agriculture exporters brought Congress and the Administration together in a bipartisan way in 2022

Recently, Congress has been very active on ag transportation, last year passing one of the very few, if only major pieces of legislation to move through the U.S. Senate unanimously and passing the House overwhelmingly three times—the Ocean Shipping Reform Act of 2022 (OSRA). While all importers and exporters benefit by OSRA, the primary sponsors were Congressmen and women, bipartisan, on behalf of their ag constituents—beef, pork, almonds, hay, lumber, cotton, *etc.*

There are significant requirements in OSRA designed to prevent or alleviate significant unreasonable practices by the ocean carriers which at times rendered U.S. agriculture an undependable and unaffordable supplier to the world during the past few years of the COVID supply chain crisis.

The Federal Maritime Commission is responsible to assure compliance with the Ocean Shipping laws, and is now engaged in Rulemakings to implement OSRA.

b. There’s More to Do to Improve the Ag Transport Supply Chain

More is needed to improve the transportation supply chain, for example, legislation has been introduced:

- to make **truck weights** reasonable,
- assure availability of **truck drivers**,
- provide reasonable **hours of service** (driver hours);

Congress and the White House must continuously monitor and engage as necessary to assure the labor-management disputes do not disrupt the supply chain.

Rail: This past fall both the White House intervened to prevent threatened national rail strikes; Congress was ready with legislation if needed.

Port Labor: Currently the West Coast port gateways are operating without a longshore labor contract in place, creating uncertainty, and causing shift of carriers and cargo from the West Coast ports to East and Gulf coast. Hopefully to be resolved in coming months.

c. Intl. Shipments to Inland Rail Ramps Requires Federal Regulatory Clarity

Currently, for international ocean shipping movements that originate or end at inland locations, regulatory jurisdiction is unclear. Thus, when a shipper is treated

unreasonably by the railroad of the ocean carrier for such an international shipment, does OSRA apply subject to the Federal Maritime Commission regulation, or does the Surface Transportation Board apply its own regulations? This uncertainty is currently preventing exporters and importers from gaining intervention and resolution of significant impediments to efficient freight movement in those inland locations.

d. Infrastructure

The supply chain crisis of the past few years exposed deficiencies in our infrastructure capacity. Ports nationwide were overwhelmed, as were communities in surrounding areas. Inland rail ramps and surrounding areas were also unable to handle the volume of trade that was entering and leaving the U.S. West Coast ports need enlargement of existing marine terminals, and building of new terminals, even construction of entire new deep-water ports. Some are now being proposed, seeking Federal infrastructure funding.

There must be continued expansion of **inland rail depots**, some relatively near the seaports, to relieve the pressure on the marine terminals at the seaports. There are many along the East Coast, but more will be effective. More are needed along the Gulf Coast. In comparison, the West Coast remains painfully and inexcusably lacking in inland rail load points to serve the overwhelmed West Coast seaports. They are desperately needed. It will require Class I railroads, short line railroads, state and local governments, port authorities and shippers to get these planned and built.

Road access is always needed, we hope the funding in the infrastructure bills will provide necessary expansion.

3. Agriculture Export Supply Chain is Complex and Fragile—Case Study

The transportation of agriculture for international delivery is complex and delicate. Let's take, for example, cotton, or grain, or soybeans, or beef or pork, originating in the heartland. One can see how many independent components, various transport modes—truck, rail, rail ramps, marine terminals, cold storage facilities, chassis, ships—are required, and how delay or shortage of any *one*, at any point, will disrupt or prevent the flow of agriculture, from U.S. origins to the foreign customer.

- Truck to pick up empty ocean containers from a local or regional rail-ramp (Presuming the ocean carrier has directed the railroad to position those empty containers there—sometimes requiring repositioning of empty containers hundreds or more miles from a seaport or inland location to that particular rail-ramp),
- Truck to the inland production or packing facility,
- Loaded, then trucked back to the rail ramps where they will wait which can be days or weeks, for a train,
- Loaded on railroad, then railed to the coastal seaport.
- Then access to the marine terminals at the seaports, either:
 - by on-dock rail, onto the marine terminal. Then, when ship arrives and is ready for loading, loaded on ship, which departs for foreign destination.
 - or container is offloaded from the train at a rail yard near the port, where it can sit for days or longer. When the ship arrives, a trucker finds a chassis (the trailer upon which the ocean contain sits when pulled by a truck), of the same brand as designated by the ocean carrier, which is brought to the rail yard; the container is loaded on that chassis, the trucker then seeks an appointment at the marine terminal to enter the gate (these appointments are often not available). Trucker brings to the terminal, can wait many hours or longer to enter. Then the container goes to the ground in the terminal, to await ship arrival and availability for loading.
 - Note: much agriculture travels from the heartland in bulk rail 'hopper cars', which arrive at near-port '[transshipment]' facilities where the bulk commodity is transferred into an ocean container, then, as described above, loaded on a chassis, taken to the marine terminal, *etc.*
- Once loaded on ship it departs for foreign destination, where most of the process above must be repeated, in reverse.
- At any point in the supply chain described above, a delay can occur, which then creates a crisis that extends throughout the transportation plan, not only for the particular shipment, but for all shipments of all shippers.
- **Refrigerated agriculture.** If you think this is complex, think about all our agriculture that requires refrigeration. Special ocean containers with precisely

controlled temperature—frozen or chilled. Cold storage facilities near the inland rail ramps or truck depots, cold storage at or near the seaports. Reefer plugs on the marine terminals, and on the ships, and at the terminals at the foreign seaport destination

4. Conclusion

The Agriculture Transportation Coalition on behalf of all agriculture and forest products members thanks the Committee for your attention to and pursuit of transportation efficiency, which is fundamental to U.S. agriculture viability.

The CHAIRMAN. Thank you, Mr. Friedmann, much appreciated.
Mr. Rosenbusch, please begin when you are ready.

STATEMENT OF COREY ROSENBUSCH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE FERTILIZER INSTITUTE, ARLINGTON, VA

Mr. ROSENBUSCH. Good morning, Chairman Thompson, Ranking Member Scott, and Members of the Committee. My name is Corey Rosenbusch. I am the President and CEO of The Fertilizer Institute. TFI represents companies in the entire fertilizer supply chain from manufacturers to distributors to retailers. And we as an industry have recently taken center stage as the spotlight has been shined on the important role that fertilizer plays in food security. Half of all crop yields on this planet are because of fertilizer use.

So I grew up in agriculture. My dad was an ag teacher and an FFA advisor, so it was actually a pleasure to spend a great part of the last year with farmers. And as the fertilizer prices began to rise during harvest in 2021, I had a chance to climb into a cotton picker with a farmer from my home State of Texas. And yes, as you can imagine, he was quite concerned over input costs. But at the same time, he understood that we are experiencing high farm income and high crop prices. But not all commodities had that same bump. I am sure you have heard that from farmers in your district.

Fertilizer prices went from a period of historic lows just a few years ago to record highs, and it was really that volatility that was so impactful to the farmer. Fertilizer materials are each very different products that are all resource-dependent and are all very different markets. The United States is fortunate to have significant production of nitrogen and phosphates, but we import over 80 percent of our potash from Canada. Globally, the United States only accounts for about seven percent of total fertilizer production, and over 90 percent of all fertilizer is actually used outside of the United States.

So if you hear nothing else I say today, hear this. Fertilizer is a globally traded commodity subject to global supply-and-demand factors. So as we look at those global supply-and-demand factors, you have to start with geopolitics. We had Belarus that was sanctioned, removing about 20 percent of global potash supply that they produce. You had China, the world's largest producer of fertilizer, who restricted their exports. You have Russia, who is the world's largest global supplier of fertilizer, who also had sanctions from many countries as the war broke out in the Ukraine, and Russia also supplies much of Europe's natural gas. As a result, we saw nearly 70 percent of all European nitrogen plants shuttered during that period.

Natural gas is that key feedstock for all ammonia production, but also the energy for ammonia, and that is the building block for

every nitrogen fertilizer product. It accounts for about 70 to 90 percent of the production cost of ammonia. And we saw natural gas prices reach over \$100 per MMBtu in Europe last August.

Fertilizer demand is also driven by crop prices, which we have seen reached record highs. Global grain stock-to-use ratios are the tightest they have been in 8 years, and it will likely take years to rebalance those. Logistics has been a huge issue for our industry. Over 60 percent of all fertilizer moves by rail, and we have seen poor rail service that was compounded by low water levels in the Mississippi River, reducing barge traffic and, of course, trucking capacity issues as well.

Now, good news in recent months for the farmer is that fertilizer prices have come down. Farmers have definitely taken a wait-and-see approach as we approach the spring planting season. European nitrogen plants have restarted. China has slowly begun exporting product. Russia trade flows have shifted and actually had a record year of exports last year. And finally, we expect market fundamentals to remain in place for the foreseeable future with high planted acres. Low grain stock-to-use ratio and high grain prices means that fertilizer demand will remain strong.

So if it is a global supply-and-demand issue, what can Congress do? In the interest of time, I will refer to my written testimony where we have outlined a number of policy solutions for the Administration and for Congress. But I can summarize those all by saying that fertilizer plants are capital-intensive facilities, sometimes costing as much as \$4 billion to build. So if one wanted to bolster fertilizer supply for the American farmer, the most significant impact that you can have to mitigate our biggest risk is to provide regulatory certainty. Thank you.

[The prepared statement of Mr. Rosenbusch follows:]

PREPARED STATEMENT OF COREY ROSENBUSCH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE FERTILIZER INSTITUTE, ARLINGTON, VA

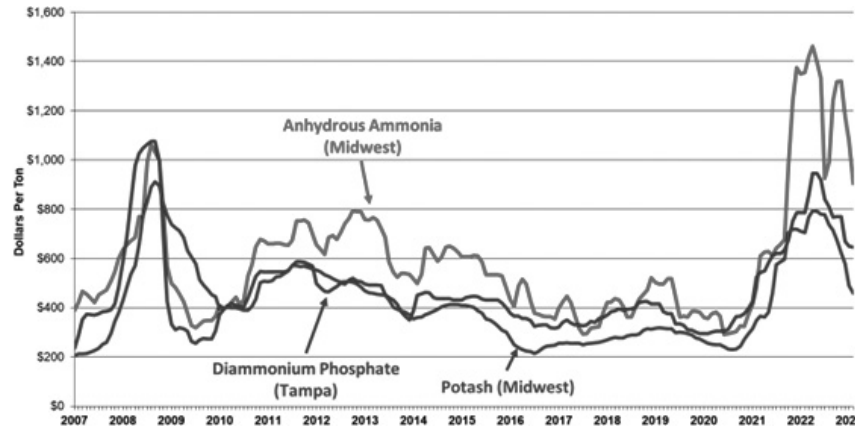
Good morning, Chairman Thompson, Ranking Member Scott, and Members of the Committee.

My name is Corey Rosenbusch, President and CEO of The Fertilizer Institute (TFI). TFI represents companies that are engaged in all aspects of the fertilizer supply chain from manufacturers to distributors to retailers. The fertilizer industry ensures that farmers receive the nutrients they need to grow the crops that feed our nation and the world. Half of all global crop yields can be attributed to fertilizer use.

I want to thank the Committee and its members for the opportunity over the last year to informally brief you on the complexity of fertilizer markets. The roundtables, virtual presentations, and meetings in your offices were tremendously helpful in educating you and your staff on the volatility that we have experienced. While this may be a review for some, I want to spend a few minutes reviewing the factors that got us to this point; and I will then share an update for the current market situation and outlook for the spring.

I grew up in agriculture as the son of an ag teacher and FFA Advisor, and I spent much of the last year visiting with farmers to hear about the stress that high input costs have caused. As prices climbed during 2021's harvest, I climbed into a cotton stripper with a farmer in my home State of Texas. While he was concerned about the price of fertilizer, he also recognized he was experiencing record high farm income and prices for cotton. But not all commodities experienced that same bump, and I have no doubt that you have also heard from farmers in your district about the high price of fertilizer. Adding to the "normal" stress of farming, fertilizer prices were at historical lows just a few years ago, followed by recent record highs. It has been this extreme volatility that has especially impacted farmers' psyche.

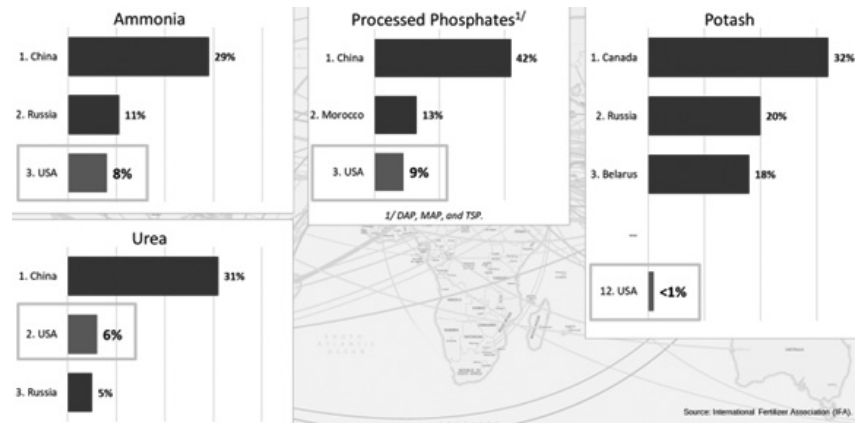
Monthly Fertilizer Prices: Jan. 2007–Feb. 17, 2023



Source: Weekly Prices Reported in Green Markets (A Bloomberg Company).

While people often speak of fertilizer as a single product, there are many fertilizer products. We often talk about fertilizer products in terms of the three macro nutrients which are all essential for plant (or crop) growth: Nitrogen, Phosphate, and Potash. They are each different products with different markets. In the case of Nitrogen, you have many forms or types of products that each have their own prices and markets: Ammonia, UAN, Urea, and Ammonium Sulfate to name a few.

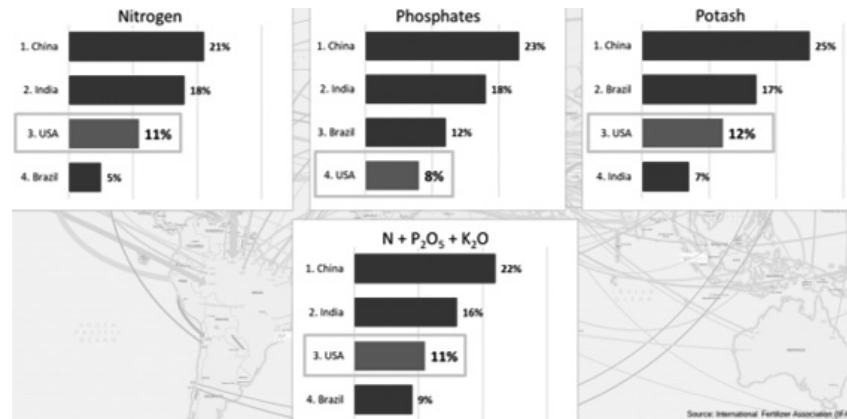
Global Producers—2021



Source: International Fertilizer Association (IFA).

The United States has significant production of Nitrogen and Phosphate fertilizers. We have some Potash production as well; however, we import over 80% of our Potash from Canada. We also import Phosphate and Nitrogen fertilizer from abroad. The U.S. only accounts for about 7% of global fertilizer production. Over 90% of all fertilizers are used outside the United States.

Global Producers—2020



Source: International Fertilizer Association (IFA).

If there is one thing you take away from my comments, it is this. *Fertilizer is a globally traded commodity, subject to international pressures and geopolitical events.* And it has been global supply and demand that has led to the current market environment.



Source: International Fertilizer Association (IFA).

Market Background

Geopolitical events have been the biggest disrupter in recent years.

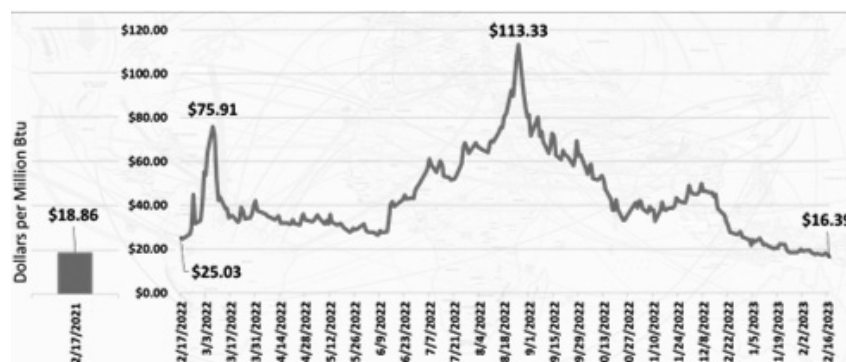
- Belarus is sanctioned out of the global market and that is 1/5 (20%) of the world's potash supply.
- China is the world's biggest producer of fertilizers (nearly 30%) and a top global supplier (about 11% of all exports). Last year, China imposed export restrictions on its fertilizer products. Because China is a significant supplier to the world's single largest buyer of fertilizer, India; this was highly disruptive, distorted global markets, and raised costs for farmers worldwide. India procures their fertilizer through a centralized government buying tender that is then subsidized before being sold to farmers.
- The Russian war in Ukraine was also highly disruptive. Russia is the biggest global supplier of fertilizers (about 20% of global supply), and that supply chain was highly disrupted at the onset of the war mainly because of sanctions imposed by several nations. Russia also restricted Europe's natural gas supply,

which Europeans relied on for their fertilizer production. This resulted in approximately 70% of European nitrogen fertilizer production shutting down last year due to high natural gas costs.

Natural gas is the key feedstock and energy source for ammonia which is the building block of all nitrogen fertilizers. Natural gas accounts for between 70% to 90% of the total ammonia production costs. Natural gas prices doubled in the United States in 2022 and remain very volatile. As mentioned, high natural gas costs shut down 70% of European nitrogen fertilizer production.

Dutch TTB Natural Gas Futures Prices

(February 17, 2021, February 17, 2022–February 17, 2023)



Source: *Investing.com*.

Crop prices reached historic highs, and commodity demand and plantings drive demand and prices for fertilizers. Crop prices were strong last year, especially for corn, which accounts for 50% of fertilizer demand in the United States. The biggest factor for fertilizer demand is global grain stock-to-use ratios which TFI understands are the tightest they have ever been, and it will likely take years to rebalance.

Logistical supply chains were highly congested and challenged. More than 60% of all fertilizer moves by rail. Fertilizer leans on rail more than any other ag commodity, and rail service was terrible last year. Beyond rail, there was some disruption from the low-water situation on the Mississippi and trucking capacity remains constrained and was made worse along the U.S.-Canadian border due to the cross-border vaccine mandate.

Recent Market Updates

In recent months, fertilizer input costs have come down and supply and demand have improved.

High prices last year led to demand deferral and resulted in inventory carryover. This was especially the case for Phosphate and Potash as farmers “mined” their soil. Excess inventory means fertilizer demand has been soft in recent months as farmers “wait-and-see” prior to spring.

European Nitrogen plants have restarted as natural gas prices have moderated following a mild winter. China has been slowly exporting more fertilizer. Russian supply disruptions have also mitigated as supply patterns shifted, leading to a record fertilizer export year for Russia. This shift in trade flows, however, also impacts prices.

Nitrogen fertilizer prices in the United States are significantly lower than they were at this time a year ago, reflecting changes in the global supply and demand balance rather than changes in the makeup of the fertilizer industry, which has remained constant. For example, urea prices in the United States have dropped by about 65% since March 2022.

Finally, TFI expects the market fundamentals to remain in place for the foreseeable future. High planted acres, low grain stocks-to-use ratios, and high grain prices means demand will likely remain strong going into the spring.

What Can Congress Do?

While Congress can’t control China or Russia, TFI has also developed a roadmap of solutions that Congress can consider.

Fertilizer production facilities are capital intensive, typically costing \$1 billion to \$4 billion to build. This means that domestic producers and many others around the world must consider long-term factors that can make or break the viability of these substantial investments. Providing regulatory certainty is perhaps the most significant impact that you can have on fertilizer markets.

A few of those include:

1. Potash and Phosphate should be placed on the government's list of Critical Minerals.
2. We also need energy policies that support an abundant, safe, and affordable supply of natural gas.
3. Permit reform is essential for mining, construction of new production facilities, and for our infrastructure.
4. We need more reliable rail service, we need to promote driver recruitment and retention for trucking, and we need investments in our water and roadway infrastructure. Congressmen Dusty Johnson and Jim Costa have some excellent legislation, the SHIP-IT Act (H.R. 471), which helps a lot on trucking.
5. Revamp current USDA conservation programs that empower retail agronomists and CCAs to help farmers access these resources.

Conclusion

Thank you again for the opportunity to be with you all this morning. I am happy to answer any questions.

The CHAIRMAN. Mr. Rosenbusch, thank you so much for your testimony.

And now, Mr. Twining, please begin when you are ready.

STATEMENT OF MICHAEL TWINING, VICE PRESIDENT OF SALES & MARKETING, WILLARD AGRI-SERVICE; MEMBER, BOARD OF DIRECTORS, AGRICULTURAL RETAILERS ASSOCIATION, WORTON, MD

Mr. TWINING. Good morning, Chairman Thompson, Ranking Member Scott, and distinguished Members of the Committee. I appreciate the opportunity to be here to testify before you about the challenges facing American agriculture. My name is Mike Twining. I serve as Vice President of Sales and Marketing for Willard Agri-Service. Willard Agri-Service is a family-owned and -operated independent retailer based just up the road in Frederick, Maryland. We service growers in approximately six states with crop protection, plant nutrition, and custom application of those products, as well as robust decision support tools to help them make decisions in this volatile environment that enable them to farm more sustainably. I appear also before you today as a member of the Ag Retailers Association Board of Directors, which I am humbled to serve as the Vice Chair of their Public Policy Committee.

The economic prosperity of ag retailers and the general public is directly tied to the economic prosperity of farmers. Only if they succeed, do we succeed. It is therefore in our interest, as well as the interest of the nation and its consumers, to have a solid safety net for producers.

First, I would like to address several regulatory burdens affecting our industry. In the past couple of years, Federal regulators proposed and finalized dozens of major rules that impacted many sectors, including agriculture. Due to the time limitations, I have only mentioned three of them today in my oral testimony. However, many other examples are included in my written testimony.

I would like to start with EPA pesticide registrations. It is essential that the EPA have a scientifically justifiable, predictable, and

functioning process for pesticide registrations. This is why we supported the PRIA legislation (Pub. L. 117-328, Consolidated Appropriations Act, 2023) that Congress passed last year. Uncertainty around what the rules will be and what the products will be available, including label changes too close to the start of season, complicates our efforts as ag retailers to stock the products that farmers will want and need, as well as our ability to use them safely and effectively.

We commend EPA for proactively addressing the Endangered Species Act, or ESA, compliance in its pesticide reviews. However, EPA's recently released ESA Work Plan needs additional modifications to ensure it does not cause severe disruptions to American agricultural industries. Ag retailers and their certified crop advisors, of which I am one, should be consulted in developing pesticide mitigation measures, and working with those experts should be accounted for in the EPA's picklist scoring methodology. Care should be taken to provide local options that work in each growing area and cropping system because they are all unique. EPA must ensure stakeholder engagement of end-users such as farmers, ag retailers, and pesticide applicators for the products they regulate.

WOTUS, the new *Waters of the United States*, or WOTUS rule, greatly expands the Federal Government's regulatory reach over private land use and allows EPA to regulate ditches, ephemeral drainages, and low spots on farmlands and pastures. None of these features meet the definition of the word *navigable waters* in the Clean Water Act, and the new rule impacts everyday activities that farmers must do on their working lands.

Finally, energy. The Biden Administration's focus on climate policy provides some ways that agriculture can contribute significantly to solutions but has also created some practical problems in implementation. Natural gas, which has already been mentioned, which is an essential feedstock to manufacture nitrogen fertilizer and is a co-product of shale oil production, has seen pricing increases, leading not only to fertilizer cost increases but volatility. Diesel fuel is used every day and is a daily necessity for every ag retailer, grain shipper, and farmer and has increased significantly in cost.

All inputs involved in the production of food have become more expensive because of these policies. The price to feed and fuel our country has risen as a result, something that every American feels on a daily basis.

While my testimony this morning highlights some of the negative effects the rural economy has had on the agriculture community recently, I am encouraged by this Committee's goals and priorities for this year. To that end, my written testimony has several recommendations for Congress and the Administration to consider. As a farm supply retailer, I am confident that improvements in safety nets in the upcoming farm bill, free and fair trade amongst agricultural producers and customers, an all-of-the-above energy strategy, and changes to the regulatory landscape currently hindering farm production will all contribute to a once again burgeoning farm economy.

Thank you for your continued commitment to American agricultural industry, and I look forward to your questions.

[The prepared statement of Mr. Twining follows:]

PREPARED STATEMENT OF MICHAEL TWINING, VICE PRESIDENT OF SALES & MARKETING, WILLARD AGRI-SERVICE; MEMBER, BOARD OF DIRECTORS, AGRICULTURAL RETAILERS ASSOCIATION, WORTON, MD

Introduction

Chairman Thompson, Ranking Member Scott, and distinguished Members of the House Agriculture Committee. Thank you for the opportunity to testify regarding the current challenges facing American agriculture.

My name is Mike Twining and I serve as Vice President of Sales & Marketing for Willard Agri-Service, a family-owned ag retailer based in Frederick, Maryland. We provide goods and services to farmers and ranchers which include fertilizer (*i.e.*, plant nutrition), crop protection products (*i.e.*, pesticides), custom application of pesticides and fertilizers, development of nutrient management plans, field scouting, soil testing, precision agricultural services, and much more to help solve production problems and manage risks through the life of their crops.

I also appear before you today on behalf of the Agricultural Retailers Association (ARA). I currently serve on the ARA Board of Directors and as Vice Chair of their Public Policy Committee. ARA is the recognized unified national voice and trusted resource for agricultural retailers and distributors. ARA unites its members and their interests to advocate and educate on their behalf, provide services to improve their businesses, and preserve their freedom to operate and innovate, ensuring a safe and plentiful food supply for all. ARA members are scattered throughout all 50 states and range in size from small family-held businesses, farmer cooperatives, and large companies with multiple outlets.

America's agricultural retailers, also known as farm supply dealers, like other industries, have been hit hard by the volatile economy we have witnessed over the past couple of years. There are a growing number of factors that have led to this economic uncertainty including substantially higher energy costs, higher crop input prices, an unreliable transportation supply chain, increased regulatory burdens, and disruptions in the global markets. Modern agricultural technologies are essential for America's agricultural production for us to continue providing safe, healthy, and affordable food, feed, fuel, and fiber for the nation and the global economy. Our industry is being asked to produce more for a growing domestic and global population with less land, water, and critical inputs.

However, it's not too late for this Committee and Congress to act in the best interest of American farmers and ranchers, the retailers and distributors that supply them, and the rest of the agricultural value chain which ultimately includes every American Citizen.

We believe Congress and this Administration needs to enact several changes to strengthen the farm bill and provide economic opportunities for America's agribusinesses to continue to thrive and grow.

The economic prosperity of agricultural retailers is directly tied to the prosperity of the farmers we serve. Only if they succeed does our industry succeed. It is therefore in our interest, as well as the interest of the nation and its consumers, to have a solid safety net for producers in the farm bill.

Farm Income Outlook

A recent forecast from USDA's Economic Research Service reported a dim outlook for farm profits. The report, entitled *USDA Agricultural Projections to 2032*, states that "economic growth continues to contract as high levels of inflation persist worldwide" contradicting statements from the White House in recent weeks touting decreasing inflation. The USDA-ERS report goes on to say that "persistent inflation, severe weather events, supply chain disruptions, and high input costs" will continue to pressure commodity prices and net farm income and net cash income are projected to decrease in 2023. I see this reality every day as I work with growers who are struggling to adjust to the unprecedented increases in costs, supply chain volatility and obtaining operating capital to fund the inputs required to plant a crop. In 2023, projected U.S. total agricultural exports decrease by 3.2 percent, while Agricultural imports are expected to be a record \$199.1 billion in 2023."¹

In addition to declining revenues, USDA-ERS predicts a decline in crop cash receipts. In this kind of economic uncertainty for farmers and the retailers supplying them, it is now more important than ever to pass a multi-year farm bill reauthorization that provides for a strengthened safety net. I fully expect your Committee will work diligently to ensure these important issues are addressed when crafting the upcoming farm bill authorization. I strongly urge the Committee to fully review this

¹<https://www.ers.usda.gov/webdocs/outlooks/105853/occe-2023-01.pdf?v=6291.9>.

forecast as it includes a broader outlook than the items referenced in my testimony this morning.

Regulatory Burdens

First, I would like to address several regulatory burdens affecting our industry. In the past couple of years, Federal regulators proposed and finalized dozens of major rules that impacted many sectors, including agriculture. I would like to highlight several today, including some that fall outside the direct jurisdiction of this Committee.

EPA Pesticide Registrations

Americans continue to have access to the safest, most diverse, and most affordable food supplies in history. This is thanks in large part to the efficiency, productivity, and innovation of U.S. agriculture enabled by pesticides, fertilizers, seed protections, biostimulants, and biotechnology products. These products are approved for use within the United States' robust science- and risk-based regulatory system.

Agricultural retailers employ commercial pesticide applicators that receive extensive education and training to apply pesticide products in accordance with laws and regulations under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). EPA has financially supported training of certified commercial applicators through state grants. The programs generally cover Best Management Practices (BMPs) for safe pesticide use as well as environmental issues like endangered species and water quality protection. Thousands of agricultural retailers and their commercial applicators have raised their professional status by also participating in voluntary programs such as the Certified Crop Advisor (CCA) program administered by the American Society of Agronomy (ASA). I am a CCA and can speak directly to the rigorous and relevant requirements to both obtain and maintain this certification. Our industry is licensed and extensively trained to store, handle, and apply Restricted Use Pesticide (RUP) products.

For healthy and productive growth of nutritious food, plants also require essential nutrients. Fertilizers and bio stimulants serve as a supplement to the natural supply of soil nutrients, build up soil fertility to help satisfy the demands of crop production, and compensate for the nutrients removed by harvested crops. Higher crop yields are well documented with better crop and soil management. Adopting nutrient stewardship contributes to the preservation of natural ecosystems by growing more on less land with fewer inputs.

U.S. agriculture remains the leader in plant breeding innovation due to clear, predictable, and science- and risk-based regulations. Plant breeders continue to strive to provide solutions to new and emerging challenges facing farmers, consumers, and the environment. Ag biotechnology such as genetically modified organisms (GMOs) and gene editing can help increase global food security. New innovations in plant breeding provide benefits such as reducing CO₂ emissions, dramatically increasing crop productivity, providing more food to remote communities, reducing input load, and decreasing food waste.

ARA is concerned by recent actions taken by the U.S. Environmental Protection Agency (EPA) to revoke all tolerances for the insecticide chlorpyrifos. We believe the actions by EPA are inconsistent with Federal statutes, the agency's own extensive record on chlorpyrifos, and sound, science-based and risk-based regulatory practices. This action by EPA will cause significant harm to the food and agricultural industries and directly impact supply chains. Other examples of disruptions to the marketplace include the U.S. Court of Appeals for the 9th Circuit ruling issued in June 2020 that canceled the registration of three Dicamba herbicides for over-the-top usage in registered crops. The Federal court decision was delivered in the middle of application season, well after seed and pesticide product selection decisions were made by American cotton and soybean farmers. If EPA had not allowed for these products continued use during the 2020 growing season under their long-standing "Existing Stocks" policies, there may not have been enough alternative products available for agricultural retailers or their farmer customers. Congress and EPA need to protect the agency's policy on "Existing Stocks" of pesticide products if there are future cancellations to prevent severe disruptions in the marketplace. These concerns are not unique to chlorpyrifos. We have seen targeted campaigns to products such as glyphosate, atrazine, and whole classes of rodenticides removed from the market or severely restrict their uses.

It is essential that EPA have a scientifically justifiable, predictable, and functioning process for pesticide registrations. Consumers and the environment depend on it, and so do registrants, farmers, and ag retailers. ARA along with other agricultural stakeholders supported the Pesticide Registration Improvement Act (PRIA) re-authorization legislation that Congress passed last December that updates registra-

tion fees used to fund the Office of Pesticide Programs (OPP) and increase the transparency between the agency and industry. We support the bipartisan effort that enabled passage of this bill and encourage the same collaboration to support the passage of a well-designed farm bill.

EPA decisions must be based on quality scientific information to which they have full access to the raw data and based on scientific analyses that truly evaluate causal relationships beyond mere correlation. Uncertainty around what the rules will be and what products will be available, including label changes too close to the start of the season, complicates our efforts to stock the products that producers will want and need as well as our ability to use them. Problems in this area have cost the industry a valuable insecticide in chlorpyrifos for which there is no suitable replacement. In other cases, label changes have been made to products that have been used safely for decades with minimal justification or done after product ordering and stocking decisions have been made by farmers and retailers.

We commend EPA for proactively addressing Endangered Species Act (ESA) compliance in its pesticide reviews. However, EPA's recently released ESA Work Plan needs additional modifications to ensure it does not cause severe disruptions to America's agricultural industry. Ag retailers and their Certified Crop Advisors (CCA) should be consulted in developing pesticide mitigation measures, and work with these experts should be accounted for in the EPA's picklist scoring methodology. It is important that mitigation options being provided work in each growing area and cropping system. For example, practices like strip tilling and diversion terraces do not make any sense in a state like Florida. EPA must ensure stakeholder engagement of end-users of the products they regulate. Agricultural retailers and their farmer customers need to have a seat at the table and be allowed to have meaningful opportunities to participate in the registration and re-registration review process at the beginning, middle, and end of any final decisions, including FIFRA label requirements that the pesticide applicator will need to follow. ARA believes the following proposed additional modifications need to be made to the EPA ESA Work Plan to ensure it does not cause severe disruptions to America's agricultural industry—

- Evaluate New Pesticides and Account for Advancements in Technologies—It is important for EPA to fully evaluate newer chemistries, even if in the same class as some older chemistries, as they may behave very differently—and may be more likely to have a narrower spectrum of activity—than older chemistries. EPA must NOT group pesticides in broad classifications without evaluating and accounting for any potential distinctions.
- County-Level Bans are Ineffective, Inefficient, Overly Broad Measures—EPA and the Services have put significant time and effort into preparing science-supported biological evaluations and have developed a new approach. For example, they have concluded that county-level bans are ineffective, inefficient, and overly broad measures that discourage growers from proactively engaging on avoiding exposure to non-target species. EPA should follow-suit and ensure that this is not an option going forward. It is important that all stakeholders focus on appropriate and effective solutions.
- Local Certified Crop Advisor (CCA)/Agronomist Included as Part of ESA FIFRA Label Mitigation Pick List—EPA is implementing mitigation measures as a pick list that gives pesticide applicators a choice to implement certain practices. If this is part of EPA's process EPA moving forward, ARA recommends that one of the main options included on the pick list relates to farmers working with their local agricultural retailer' agronomist/Certified Crop Advisor (CCA) to develop pesticide mitigation measures. Agricultural retailers and their CCA's are partners with farmers on the front lines of critical decisions in agriculture to address pest concerns, sustainable agricultural practices, and tight financial margins to produce a crop.
- Incorporate Agricultural retailers and other end-user input to determine feasibility of mitigation measures along with providing flexibility for the industry—Agricultural retailers, commercial applicators, and their farmer customers must be involved when EPA is considering mitigations measures. EPA must ensure stakeholder engagement of end-users of the product. Agricultural retailers and their farmer customers should have meaningful opportunities to participate in the registration and re-registration review process at the beginning, middle, and end of any final decisions, including FIFRA label requirements that the pesticide applicator will need to follow.
- EPA and the Services must establish efficient processes to complete the entire registration/consultation process—ARA agrees with recommendations made by

the Pesticide Policy Coalition (PPC) that “EPA must adopt more efficient approaches to meeting its ESA obligation.” EPA should adopt policies that allow pesticide registrants to provide input on how best to refine up-front mitigation measures based on additional data. It is important for EPA and the Services to ensure registrants, agricultural retailers, commercial applicators, and farmers are involved in agency decision making at every major step of the registration review process and label decision making process. It is critical that the Services and the registrants, agricultural retailers, commercial applicators, and farmers be included in discussions with EPA at every major step of the ESA consultation process to finalize mitigations before finalizing FIFRA labels.

- Prioritize development of programmatic consultations. All parties to the pesticide registration process, from registrants to regulators to end-users, could be well-served by developing programmatic consultations on a pesticide-class basis (herbicides, insecticides, *etc.*) that include practices which might avoid jeopardy for all species. As we state above, however, individual products, and especially newer chemistries may behave differently, and be more likely to have a narrower spectrum of activity than some older chemistries or otherwise present a different potential risk profile. So, while considering programmatic consultations, EPA assessments that group pesticides together individual registration assessments may need to evaluate and account for these distinctions.

Finally, ARA urges the Committee to include language in the 2023 Farm Bill reauthorization that codifies state oversight of pesticides at the state level. 46 states have adopted some form of pesticide preemption and are working cooperatively with local officials to enforce robust oversight of state pesticide laws.

Ensuring that pesticides are properly regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is imperative for all our health and safety. Since the 1970s, state lead agencies have worked with the U.S. Environmental Protection Agency (EPA) through cooperative agreements to administer and enforce FIFRA laws and support the development of scientifically based pesticide labels. State level pesticide control officials are career employees with extensive scientific training and are therefore best situated to prevent pesticides from having adverse effects to the environment.

This targeted fix will ensure that those with expertise at state lead agencies and EPA are the ones to determine pesticide usage and protect the status quo of 46 states where robust oversight of pesticides is already occurring. There is precedent for including similar language in the farm bill, as demonstrated in H.R. 2 the Agriculture Improvement Act of 2018 where the House included such language in its initial 2018 Farm Bill. However, it was ultimately not included in the final conferenced version signed into law on December 20, 2018. It is therefore important the language be included, and remain in, the final 2023 Farm Bill. This bipartisan proposal is supported by over 200+ national, regional, and state organizations with membership throughout the United States.

WOTUS

The new *Waters of the United States (WOTUS)* rule greatly expands the Federal Government’s regulatory reach over private land use allows EPA to regulate ditches, ephemeral drainages and low spots on farmlands and pastures. None of these features meet the definition of the word “navigable water” in the Clean Water Act (CWA) as intended by Congress. The new rule is likely to impact everyday activities such as tilling, fertilizing, spraying, planting, and fence-building on ag lands.

This new WOTUS rulemaking takes us away from the increased clarity and predictability achieved in the Navigable Waters Protection Rule (NWPR) and it also ensured states could enforce their own environmental laws as intended using a cooperative federalism approach. EPA was premature in moving forward with the new WOTUS regulations as the U.S. Supreme Court is currently considering *Sackett v. EPA*, a Federal court case that will answer the important legal question of whether the “significant nexus” test is appropriate to use when determining jurisdiction of the EPA and Federal Government under the CWA. ARA believes EPA and the Army Corps of Engineers should wait to implement any new WOTUS regulations until the Supreme Court issues a decision in the *Sackett v. EPA* case.

ARA strongly supports H.J. Res. 27, the WOTUS resolution of disapproval under the Congressional Review Act (CRA) introduced by House Transportation & Infrastructure Committee Chairman Sam Graves (R-MO), Chair of the T&I Water Resources Subcommittee David Rouzer (R-NC), along with senior Members of the House Committee on Agriculture. ARA urges swift passage of this important proposal and send an important message from Congress to the Biden Administration. A clean, safe, and abundant water supply is a top priority for ARA, our members,

and their rural communities. This can be achieved with clear, concise, common-sense regulations provided in NWPR.

Energy

The Biden Administration's focus on climate policy provides some ways that agriculture can contribute significantly to solutions, but also has created some practical problems in implementation. Natural gas, which is an essential feedstock to manufacture nitrogen fertilizer and a co-product of shale oil production, is now more expensive. Diesel fuel, used to transport products across the nation and operate agricultural equipment is significantly higher. Diesel is necessary for every ag retailer, grain shipper, and farmer.

Diesel powered irrigation systems used to water our crops, plastics used to contain crop protection products, and even the packaging used by food producers, all have become more expensive because of these policies. The price to feed and fuel our country has risen as a result.

ARA also support Federal policies that increase domestic energy production, resulting in reduced costs for crop input materials manufactured in the U.S. Our nation must remain energy independent by including oil, natural gas, and other domestic energy supplies, such as renewable fuels like ethanol and biodiesel, in our efforts to promote economic growth in the nation's ag sector and reduce U.S. dependence on foreign sources of energy. Overall, we support an "all of the above" energy strategy and believe this approach is necessary to support a resilient food supply chain. Demand for oil and gas is increasing. Congress and the Biden Administration must avoid policies that halt or hold back increased domestic energy production such as development onerous and duplicative regulations, restricting access to abundant supplies of oil and gas located on Federal lands, permitting delays and denials, and inconsistent environmental review standards, that cause bottlenecks in the supply chain.

According to a recent study conducted by Environmental Health & Engineering, Inc., ethanol reduces gasoline's greenhouse gas emissions by 46 percent. Additionally, by 2022, USDA anticipates that corn ethanol's relative carbon benefits could reach up to 70 percent thanks to continued innovation in the ethanol process.

ARA issued a commissioned study in October 2020 entitled, "Economic Impacts to U.S. Biofuels, Agriculture, and the Economy from Subsidized Electric Vehicle Penetration." The study examined three scenarios for electric vehicle (EV) market penetration through 2050 and their potential impacts on biofuels consumption, the agricultural sector, and the greater economy. The three scenarios include:

1. Base Case: EV market penetration increases to 13 percent of light-duty vehicle sales by 2050, following Annual Energy Outlook Reference Case projections.
2. ICE Ban by 2050: EV market share reaches 100 percent of light-duty and freight vehicle sales by 2050 due to a ban on internal combustion engines (ICE).
3. ICE Ban by 2035: EV market share reaches 100 percent of light-duty vehicle sales by 2035 and 100 percent freight vehicle sales by 2040 due to a ban on internal combustion engines.

These scenarios were selected to present a full range of possible impacts across the biofuels value chain and supporting supply chains. The biofuels value chain includes farm seed, fertilizer, and other inputs required for crop production, maintenance, harvesting, intermediate transportation, and biofuels manufacturing. The ICE Ban by 2050 and ICE Ban by 2035 scenarios were designed to represent scenarios where non-market policy factors, including a potential ban on the sale of vehicles with an internal combustion engine, could require EV adoption. Relative to the Base Case, this study found that in 2050:

- U.S. light-duty and freight vehicle consumption of ethanol and biodiesel could decline up to 90 percent to 1.1 billion gallons and up to 61 percent to 0.8 billion gallons, respectively.
- Corn and soybean consumption decrease by up to 2.0 billion bushels and up to 470 million bushels, respectively.
- Corn prices fall up to 50 percent to \$1.74 per bushel.
- Soybean prices fall up to 44 percent to \$4.92 per bushel.
- U.S. Net Farm Income decreases by up to \$27 billion.
- U.S. GDP declines by up to \$26.4 billion, resulting in cumulative GDP losses of up to \$321 billion.
- U.S. job losses could reach up to 255,300 in the year 2050.

These studies demonstrate that biofuels, like ethanol and biodiesel, must continue to be critical pieces of a low-carbon economy. According to the U.S. Energy Information Administration (EIA) biodiesel is carbon-neutral because the plants (soybeans) that are the source of the feedstock for making the renewable fuel absorb carbon dioxide (CO₂) as they grow. All forms of domestically produced energy should be fully utilized to develop and promote low-carbon emission vehicles as it will help keep energy, manufacturing, food, and fuel costs low for American consumers and ensure economic prosperity for America's domestic industries. For these reasons, we oppose efforts to ban the internal combustion engine as it would have an adverse impact on the U.S. agricultural industry and rural communities. ARA also supports the Renewable [Fuel] Standards (RFS) and the year-round sale of E15. Congress needs to restore the U.S. energy independence and global leadership to ensure long-term economic growth and energy security.

Labor

The agricultural community is dependent on a sustainable workforce now more than ever. Every farm worker engaged in high-value labor intensive crop and livestock production sustains an average of two to three off-farm jobs. With the added burden of a global pandemic, employers and employees are strained even further.

The current H-2A ag guestworker visa program is broken and only available for part of the agricultural industry. Additionally, agriculture needs the H-2A program to be more flexible as it currently requires the cooperation of multiple Federal agencies which can complicate the program.

Our economy is expanding quickly in response to the post COVID-19 business openings. Supply chains for consumer, industrial, and agriculture businesses need to move more products in a short amount of time and in higher volumes to keep pace with demand. Trucking demand is outpacing the supply of available drivers. As noted above, road infrastructure is important and truck deliveries are critical to keep supplies on our retail shelves, raw materials to manufacturers, and agriculture productive. A practical proposal with immediate results would be to increase weight limits for trucks on roads to from June 30–November 1 across the nation. Resupplying America would boost the economy by ensuring raw materials and finished goods are in the right place for purchase during this period of high demand.

Allowing higher payloads to resupply America's supply chains is the right policy to consider because it would increase efficiency, reduce costs, and lower emissions with fewer trucks in a short amount of time. The increased weight on the roads would occur before most areas have significant freezing and thawing. Increased inventory would be available to consumers, easing price increases and providing inputs for manufacturing and agriculture.

Seventy percent of the nation's freight is carried by commercial trucks, yet as our economy strengthens, motor carriers have difficulty sourcing the drivers they need to handle growing capacity. According to a recent estimate by the American Trucking Association in 2021, the driver shortage reached a record high of roughly 81,000, and that number is only expected to grow to 160,000 drivers by 2031 absent any changes to the status quo. In many supply chains, companies are being forced to increase prices to account for higher transportation costs. This will ultimately result in higher prices for consumers on everything from electronics to food.

While 48 states currently allow drivers to obtain a commercial driver's license at 18, they are prohibited from driving in interstate commerce until they are 21. ARA supported the inclusion of the Safe Driver Apprenticeship Pilot Program included in the "Infrastructure Investment and Jobs Act" (IIJA) passed in the last Congress. This program will allow 18 to 20 year old drivers to be trained as commercial truck drivers and drive in interstate commerce. Commercial trucks are now being outfitted with the latest safety technology including active braking collision mitigation systems, forward-facing event recording cameras, and automatic or automatic manual transmissions. We currently use these technologies in our trucks at Willard Agri-Service and I can attest to its effectiveness and increased safe driving that occurs. We would like to hire qualified and interested young people right out of high school and begin them on a rewarding career. ARA is concerned with the restrictions being placed on this new pilot program regarding the total available apprenticeship slots (3,000). In addition, participating motor carriers are required to be part of the U.S. Department of Labor-approved Registered Apprenticeship Program (RAP) to be eligible. This late requirement, which was not part of any provisions included by Congress when it developed a carefully crafted this young driver apprenticeship program, has prompted many motor carriers to decline participation in the program. ARA believes the program should be expanded to include more eligible drivers and the DOL requirement eliminated in order to increase motor carrier participation.

The Farm-Related Restricted Commercial Driver's License (CDL), or more commonly referred to as the "Seasonal Ag CDL" program, has been an essential seasonal program for farm-related service industries since 1992. These industries have historically had a very strong transportation safety record and it has not been diminished since these Federal regulations have been in place. The Seasonal Ag CDL program has helped promote economic growth for America's agricultural industries serving the essential needs of farmers during the busy planting and harvesting seasons. Due to challenging weather events, the increase in crop production diversification, technological advances, and weight increases in light duty pickup trucks and agricultural equipment over the past several decades, it is necessary to modernize the Federal regulations providing the framework for these state-administered programs. The temporary shutdown of the state department of motor vehicles offices throughout the nation during the height of the [COVID]-19 pandemic also caused major disruptions for farm-related service industries and their rural communities.

Please support additional reforms to the Farm-Related Restricted CDL program with the following reforms:

- Ensure Farm-Related Restricted CDL drivers can also operate certain Class A commercial vehicles (excluding tractor-trailers) in recognition of the advances and changes made to light duty pickup trucks, agricultural equipment, and trailers over the past 30 years.
- Eliminate the requirement for in-person seasonal renewal of the Farm-Related Restricted CDL.

There is a strong need for long-term modifications to this program to ensure economic growth for our industries and their rural communities while continuing to maintain a strong transportation safety record. This essential seasonal CDL program is currently authorized in 24 states. The 2023 Farm Bill reauthorization offers an opportunity to enact reforms that can help provide necessary transportation flexibility for farm-related service industries and ensure there are no disruptions to America's agricultural production and the supply chain.

The Hours of Service (HOS) agricultural operation exemption has been vital for our industry to ensure "just in time" delivery of farm supplies and other essential products and services to farm and ranch customers. The electronic logging device (ELD) requirements highlighted issues with the existing HOS regulations and the need to modernize the agricultural exemption. While it has had the largest impact on the livestock industry, there has also been an impact on farm supply transporters and smaller trucking operations. To address these issues, ARA requests support of legislation eliminating the HOS ag exemption's planting and harvesting season provision. Over 30 states already have a year-round "planting and harvesting season" designation. Eliminating this provision ensures the HOS ag exemption is year-round for all states, promoting regulatory consistency and alleviating unnecessary regulatory burdens highlighted by the ELD mandate. We also request support for expanding the current air mile radius of 150 air miles up to 200 air miles for farm supply transporters following an FMCSA pilot program to collect safety data to address continued industry consolidation and driver shortages.

In 2012, Congress included a new mandate that created a requirement for Entry-Level Driver Training (ELDT). The new ELDT rule went into effect in February 2022. This new requirement costs between \$6,000 to \$8,000 per driver and possibly higher, depending on the trainer and can take several days and up to 20 days to complete. ARA requests relief be provided agricultural retailers and other agribusinesses relief from these new Federal requirements as our industry continues to face a growing driver shortage and higher operating costs. In the last Congress, the *Trucking Regulations Unduly Constricting Known Service-providers (TRUCKS) Act* was introduced. This common-sense legislation would allow states to exempt employees of agriculture-related industries and small businesses from the ELDT requirements to obtain their CDL. Individuals may be faced with paying for these new training requirements whether employed by a company or seeking employment, creating an unnecessary barrier to entry into become a commercial truck driver.

USDA agencies collaborate on their climate change and supply chain policies due to their inherent linkage to the production of raw agricultural commodities—the first step in the food and agricultural supply chain and the most likely step to be impacted by climate change policies. As an alternative to cropland idling climate change policies, I urge USDA to prioritize Federal resources toward working land programs to achieve large environmental and economic benefits by incentivizing broader adoption of best management farming and ranching practices.

I also support strengthening U.S. freight transportation policy and infrastructure to help ensure there are many efficient ways for agricultural commodities and prod-

ucts to flow throughout the agricultural supply chain. The U.S. freight transportation system can be strengthened through the following ways:

- Adopt solutions to better balance the needs of ocean carriers with the needs of our agricultural exports.
- Support reauthorization of the Surface Transportation Board (STB) and include provisions that foster increased competition among freight railroads and other transportation modes, increase shippers rights, provide better methods for challenging unreasonable rail rates and require railroad carriers to provide increased access to railroad service data to enhance agricultural supply chain operations.
- Increase motor carrier capacity through regulatory reform and legislative change.

These regulatory changes will help our nation's freight continue to move while preserving the safety of our highway and rail system.

Pro-Growth Economic Policies

The Agricultural Retailers Association sees a need to support and advocate for pro-growth economic policies that will aid our members by developing a more business-friendly marketplace in which to operate. There are several barriers to entry within the American Tax Code we would like to see changed to protect our freedom and license to operate. These pro-growth policies will also positively impact our nation's food supply chain and its resiliency.

Protecting current tax provisions is also paramount in promoting growth. The estate tax has long been a detriment to our member's business and, as such, we support its full repeal.

ARA also supports a workable sale and use tax collection system to shield retailers and farmers from burdensome tax compliance requirements and we continue to advocate for efforts to streamline these requirements.

ARA recently signed onto a letter to Congressional leadership regarding the need to preserve several tax provisions that would support new and multi-generational farm operations, thus ensuring a robust and dependable food supply chain. The letter noted that with more than 370 million acres expected to change hands in the next 2 decades, tax policies will determine agricultural producers' ability to secure affordable land to start or expand their operations. Highlighted were three critically important tax provisions:

- **Stepped-Up Basis:** Assets in agriculture are typically held by one owner for several decades, so resetting the basis on the value of the land, buildings, and livestock on the date of the owner's death under a step-up in basis is important for surviving family members and business partners to ensure the future financial stability of the operation.
- **Like-Kind Exchanges:** This provision allows businesses to buy and sell like assets without tax consequences, thus helping farmers and ranchers, who are typically "land rich and cash poor," maintain cash flow and reinvest in their businesses.
- **Sec. 199A Business Income Deduction:** To maintain a reasonable level of taxation for pass-through businesses, like farms and ranches, it is critical to preserve Section 199A business income deduction.

We also support a consistent corporate tax structure and oppose changes to the current corporate tax structure. These provisions are fundamental to the financial health of production agriculture and the businesses that supply its inputs, transport its products, and market its commodities.

ARA strongly advocates for the free and fair trade of agricultural products, equipment, and crop inputs that are essential to food supply chain resiliency. We believe this will create opportunities for economic benefit for farmers, ranchers, retailers, and other members of the supply chain. ARA members and their farmer customers purchase crop inputs from both domestic and international manufacturers. ARA strongly supports the domestic crop input manufacturing industry, and policies that will make them more efficient and competitive globally. However, our primary interest lies in achieving competitive sources of products with which our retailer and distributor members can best serve their grower customers.

We have consistently supported reducing both domestic and international trade barriers. The agriculture industry is heavily weather dependent; thus, to ensure a strong U.S. food supply, farmers require large volumes of agriculture inputs during tight time spans during the planting and harvest seasons. Hence, it is necessary for the U.S. agriculture industry to have a strong and steady supply of crop protection

products and fertilizers available to ensure adequate supply and to avoid wild price swings in the market. Our policy position supporting fair and free trade of agricultural products is a top priority that includes foreign and domestic manufacturers alike and treats imports and exports equally.

Conclusion

While my testimony this morning highlights some of the negative effects the rural economy has had on the agriculture community recently, I am encouraged by this Committee's goals and priorities for this year as well as actions taken in the last Congress to help improve our supply chain and allow the nation to remain globally competitive.

To that end, we recommend the following supply chain solutions for Congress and the Administration to act upon:

- Reauthorization a Multi-Year Farm Bill that strengthens the crop insurance program, promotes voluntary conservation programs that allow for the continuation of working lands, CCAs being automatically recognized as Technical Service Providers (TSP) by NRCS, pesticide preemption, and increased ag research funding.
- All of the Above Energy Strategy that includes oil, gas, and renewable fuels.
- Add Phosphate and Potash to U.S. Critical Minerals List.
- Support reauthorization of the Surface Transportation Board and include reforms that promote increased competition and provides increased shippers rights.
- Increase the number of available commercial truck drivers through an expanded Young Driver Apprenticeship (ages 18–20).
- Implement additional Seasonal Ag CDL program reforms by allowing on-line renewals and use of certain Class A Commercial Vehicles for agribusinesses.
- Hours of Service (HOS) pilot program for transporters of farm supplies that are allowed to operate up to a 200 air-mile radius.
- Waive Jones Act requirements for agricultural shipping.
- Remove [COVID]–19 vaccination border restrictions.
- Implement National Environmental Policy Act (NEPA) Reforms
- Protect use of essential pesticide products and other modern ag technologies.

As a farm supply retailer, I am confident that improvements to safety nets in the upcoming farm bill, free and fair trade amongst agriculture producers and customers, and changes to the regulatory landscape hindering farm production will all contribute to a once again burgeoning farm economy.

The CHAIRMAN. Mr. Twining, thank you so much for your testimony.

Mr. Brown, please begin when you are ready.

STATEMENT OF MIKE BROWN, PRESIDENT, NATIONAL CHICKEN COUNCIL, WASHINGTON, D.C.

Mr. BROWN. Chairman Thompson, Ranking Member Scott, and Members of the Agriculture Committee, I want to thank you for the opportunity to present testimony today. My name is Mike Brown. I am the President of the National Chicken Council. Today's hearing addresses a topic that is critically important for the chicken industry: over-regulation that suffocates rather than fosters a vital national industry.

The chicken industry is a model of American innovation and efficiency. In fact, there is no more important food source in America, I would argue, the world. Chicken is healthy, sustainable, and affordable. Chicken supports millions of jobs in thousands of rural communities. But overzealous and misguided regulations threaten to take chicken off the table for millions, and those most vulnerable would be first in line: lower-income earners, children who receive

free and reduced school lunch meals, and needy individuals who rely on food banks.

USDA is threatening to layer on another series of unnecessary and financially ruinous regulations, and it is critical we don't repeat past mistakes. First, USDA has resurrected a 13 year old Packers and Stockyards Act rulemaking that would stifle chicken production. Through a series of at least three rules, USDA is proposing to greatly increase the costs and legal risks involved in chicken grower contracting, make it all but impossible to incentivize high-performing farmers without bonus pay and eliminate the need to show injury to competition. The 2010 version of these rules would have cost the industry more than \$1 billion.

Today, USDA has taken a unique approach. They have taken those rules and they have broken them up into three rules. So take the billion, divide by three, that is how they are costing their rules. But 10 years ago *versus* today, you can imagine the cost of what it is to raise birds, so we are probably well over \$1.5 billion with that particular rule.

Second, USDA is suggesting it might abandon a well-established program allowing chicken processors to run at certain speeds at their plants. This program dates back to the Clinton Administration. It is bipartisan. Democratic Administrations, Republican Administrations, Democratic Administrations, and here we are. And to threaten to reduce line speeds could have an incredible impact not only on the prices that consumers pay, but also the number of birds that growers can grow. And they are our most important asset, our growers, though many of you hear differently.

Third, USDA has released a proposed framework that would make *Salmonella* an adulterant in all raw poultry, an abrupt change from longstanding USDA policy and court precedent. The chicken industry has devoted tremendous efforts to controlling *Salmonella*, and, on a per-consumption basis, rates have decreased for raw chicken over the years. And as we all know, proper cooking destroys *Salmonella*. USDA has presented no data to justify its proposal. The technology does not exist to implement a policy like this. And this policy would be inconsistent with the Poultry Products Inspection Act (Pub. L. 85-172). But one thing is certain: Treating *Salmonella* as an adulterant in raw poultry would lead to disastrous levels of food waste, something I know that this Committee and Congress and the Administration take seriously. All these regulatory programs share two things in common: One, there is no compelling justification for them; and two, they would drive unprecedented levels of food inflation and food scarcity.

Mr. Chairman and Members of the Committee, the chicken industry, the American consumers, and farmers have faced a lot over the past several years. Chicken is the most important protein in the world. Now is not the time to be layering on additional regulations that further drain consumers, farmers, and the chicken industry. Thank you for the opportunity to present today. I know I have presented you with lengthy written comments.

[The prepared statement of Mr. Brown follows:]

PREPARED STATEMENT OF MIKE BROWN, PRESIDENT, NATIONAL CHICKEN COUNCIL,
WASHINGTON, D.C.

Chairman Thompson, Ranking Member Scott, and distinguished Members of the Committee on Agriculture, thank you for the opportunity to come before you today to present testimony on the challenges facing American agriculture. The National Chicken Council (“NCC”) is the national trade association representing vertically integrated companies that produce, process, and market over 95 percent of the chicken in the United States. NCC members include allied industry firms that supply necessary inputs and services for the chicken industry. Today’s hearing, entitled “Uncertainty, Inflation, Regulations: Challenges for American Agriculture,” addresses a timely and critical topic, and NCC appreciates the opportunity to participate.

Chicken processors’ positive economic impact stretches from coast to coast, hits every sector of the U.S. economy and is felt in every Congressional district. We know that chicken is nutritious, affordable, and versatile, but chicken also means jobs—whether it’s on the farm, in the processing plant, the transportation sector, manufacturing, retail or restaurants. Companies that produce and process chicken in the United States employ as many as 381,164 people across the country and generate an additional 1,136,633 jobs in supplier industries, including jobs in companies supplying goods and services to the broiler industry.¹ Broiler production is the primary economic driver of many rural communities and the livelihood of thousands of small business family farmers—in 2021, small family farms accounted for 47 percent of U.S. poultry and egg output.²

Not only does the chicken industry create good jobs in the United States, but the industry also contributes to the economy as a whole. The broader economic impact flows throughout the economy, generating business for firms seemingly unrelated to the chicken industry. Real people, with real jobs, working in industries as varied as banking, real estate, accounting, even printing all depend on the chicken industry for their livelihood. In fact, in 2022, the industry was responsible for as much as \$417.04 billion in total economic activity throughout the country, creating or supporting as many as 1,517,797 total jobs.³ The industry also generates sizeable tax revenues. Nationally, the industry and its employees pay about \$19.73 billion in Federal taxes, and \$5.78 billion in state and local taxes.

The U.S. broiler industry is the world’s largest producer of chicken. In 2021, U.S. farmers produced nearly 60 billion pounds of broiler chickens valued over \$30 billion.⁴ A portion of this product is exported, and the United States is the world’s second largest broiler meat exporter, after Brazil.⁵

Chicken is America’s preferred protein, and Americans are on track to consume over 102.4 pounds of chicken per person in 2023, more than any other meat protein source.⁶ Moreover, at a time when food deserts are commonplace and availability of nutritious food is a top concern among consumers, chicken is the most available meat source in the United States⁷ and is recommended by the U.S. Department of Agriculture (USDA) *Dietary Guidelines for Americans* as a top unprocessed, nutrient-dense protein source.⁸ The broiler industry and its partners work hard to make sure consumers have a healthy protein option available to them, doing our part to

¹2022 *Impact Report of the Chicken Industry*, U.S. Poultry & Egg Ass’n (Oct. 18, 2022), <https://chicken.guerrillaeconomics.net/reports/2e2ef9af-f1eb-40ca-a0ad-6b21c3e92c13>; 2022 *Poultry and Egg Economic Impact Study Methodology*, U.S. Poultry & Egg Ass’n (Oct. 18, 2022), <https://poultry.guerrillaeconomics.net/res/Methodology.pdf>. To view the economic impact of chicken in your state and district, visit chickenfeedsamerica.org.

²C. Whitt, *et al.*, *America’s Farms and Ranches at a Glance*, USDA Economic Research Service (ERS) (Dec. 2022), <https://www.ers.usda.gov/webdocs/publications/105388/eib-247.pdf?v=9539.4>.

³2022 *Impact Report of the Chicken Industry*, *supra* note 1.

⁴*US Broilers: Production by Year*, USDA ERS (April 28, 2022), https://www.nass.usda.gov/Charts_and_Maps/Poultry/brlprd.php; *U.S. Poultry: Production and Value of Production by Year*, USDA ERS (April 28, 2022), https://www.nass.usda.gov/Charts_and_Maps/Poultry/valprdbetc.php.

⁵2021 *Agricultural Export Yearbook, Poultry 2021 Export Highlights*, USDA Foreign Agricultural Service (April 14, 2022), <https://www.fas.usda.gov/poultry-2021-export-highlights>.

⁶See USDA Economic Research Service, 2022 estimates and 2023 forecasts, *Data Products*, USDA ERS, <https://www.ers.usda.gov/data-products/>.

⁷In 2021, 68.1 pounds of chicken per person were available for human consumption. *Food Availability and Consumption*, USDA ERS (Jan. 26, 2023), <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/food-availability-and-consumption/?topicId=080e8d1d-e61e-4bd8-beac-51f0f1d1f0fe>.

⁸*Dietary Guidelines for Americans, 2022–2025*, Ninth Edition, USDA at 33 (Dec. 2020), https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf.

work towards addressing the first pillar of the White House National Strategy on Hunger, Nutrition, and Health—food availability and affordability.⁹

Our members may feed the nation and the world, but they are acutely aware of their reliance on local talent and passion in the communities they call home. Throughout the pandemic and 2020, chicken companies all around the country gave back—and continue to give back—to their local communities by making donations to food banks, soup kitchens, local health care facilities, police, and fire stations. Every weekend, you could find a company selling chicken at reduced prices right out of trucks in the local community. In coordination with Meatingplace News, NCC compiled a snapshot of NCC member community donations in 2020:¹⁰

- 2,540,000+ pounds of protein
- \$132,800,000+ million dollars
- \$981,000+ in grants
- 22,000,000+ meals

These data do not represent every commitment by every member, but they provide a rough estimate of meals—and hope—delivered in what was a challenging year.

Community support is but one of many factors driving sustainability in the broiler chicken industry. For the chicken industry, sustainability means being responsible stewards of land and water, animal and feed management, our people, and communities into the future. Flowing from this commitment, a lifecycle assessment of the broiler industry found that, from 2010–2020:¹¹

- Land use decreased 13 percent
- Greenhouse gas emissions decreased 18 percent
- Water consumption decreased 13 percent
- Fossil-based resource use decreased 22 percent
- Particulate-forming emissions decreased 22 percent

At the same time these important reductions were being achieved, the broiler chicken industry increased overall chicken production by more than 20 percent.¹² In other words, the chicken industry now produces much more chicken using many fewer resources than in 2010. The industry is committed to continuing to advance critical sustainability goals in the years to come. I refer the Committee to the attached NCC *U.S. Broiler Chicken Industry Sustainability Report* for more information about the many steps being taken to advance sustainability in our industry.

The chicken industry is a model of American innovation and efficiency. The industry has only been able to be America’s most affordable, available, and nutritious source of protein by improving its efficiency over many years. The efficiency of the broiler industry, however, is increasingly threatened by overreaching and costly Federal regulation that threatens to squeeze the chicken production process from every direction. The results would be devastating: loss of jobs, decimation of family farmers, fewer and more costly exports, and more expensive chicken for American consumers.

NCC urges the Committee to take a critical look at the regulatory barriers being erected around and within the chicken industry and to determine whether they truly are in the interest of American farmers, workers, and consumers. To illustrate the barriers being erected, the harm they would cause across America, and the lack of any legitimate societal benefit, my testimony focuses on three critically important topics: chicken farmer contracting, processing plant line speeds, and USDA’s policy toward *Salmonella* in raw chicken.

⁹*Biden-Harris Administration National Strategy on Hunger, Nutrition, and Health*, White House (Sept. 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/09/White-House-National-Strategy-on-Hunger-Nutrition-and-Health-FINAL.pdf>.

¹⁰*Exhibit 1, NCC 2020 U.S. Broiler Chicken Industry Sustainability Report* (Sept. 2021) at p. 49.

¹¹*Id.* at 13; *Broiler Production System Life Cycle Assessment: 2020 Update*, NCC, https://nccsite.wpengine.com/wp-content/uploads/2021/09/Broiler-Production-System-LCA_2020-Update.pdf.

¹²According to USDA’s Economic Research Service, domestic chicken production increased from 36.9 billion pounds in 2010 to 44.5 billion pounds in 2020, the same period covered by the lifecycle analysis. See “All Meat Statistics” in *Livestock, Dairy, and Poultry Outlook: Livestock and Meat Domestic Data*, USDA ERS (last updated Jan. 27, 2023), <https://www.ers.usda.gov/data-products/livestock-and-meat-domestic-data/livestock-and-meat-domestic-data/#All%20Meat%20Statistics>.

USDA Is Proposing to Dismantle Chicken Contract Farming

Background on Chicken Contracting

The American chicken industry is the most competitive in the world. This is no accident, but nor was it foreordained. Rather, the industry is built on a grower compensation system—refined through decades of innovation—that encourages farmers to raise healthy birds in an efficient manner, relieves family farmers of many of the economic risks otherwise inherent in farming, and ensures that hard-working farmers are appropriately rewarded for their efforts.

To briefly describe the chicken contracting structure, broiler integrators contract with independent farmers, often referred to as “growers,” to raise broiler chicks on behalf of integrators. Integrators deliver broiler chicks to growers on the day the chicks hatch. Growers raise the chicks into broilers using feed, veterinary care, and other consultants like animal welfare experts that are provided by the integrator. Growers are responsible for providing quality housing, farm maintenance, on-farm inputs, and day-to-day care of the broilers.

The system’s fair, honest contracts provide a target pay that high-performing growers can supplement by raising birds efficiently. In a typical grow-out contract, growers and integrators agree on a pre-determined target price per pound of weight gain based on an average. The specifics vary, but growers are usually either paid the target plus a bonus for high performance, or grower payments are adjusted slightly upward or downward from the target based on relative performance. Overall, regardless of the approach taken, growers earn a predictable payment plus the opportunity to earn a bonus for strong performance. This approach rewards skilled growers who have honed their management practices to raise healthy birds most efficiently, and it ensures all growers have a strong incentive to raise healthy flocks.

Properly cared-for birds experience optimal growth rates and have lower mortality, both of which increase a grower’s pay. This contract structure makes the well-being of birds the integrator’s and grower’s top priority because incentives are given to farmers who raise the healthiest, highest-quality birds. Similarly, integrators have every incentive to make sure their growers succeed and produce healthy, quality birds, because the integrator is counting on those birds to produce chicken meat. If an integrator sees a flock struggling or identifies opportunities to increase efficiency, the integrator will provide the grower with assistance through technical experts that are familiar with the breed, business, and growing conditions to help the grower maximize his or her potential.

As importantly, the poultry grower contracting system has evolved to efficiently allocate economic risk to the parties best prepared to burden it. In fact, data show that chicken companies remove approximately 97 percent of the economic risk from growers as compared to independent growers.¹³ Expensive and highly variable inputs such as the broiler chicks, feed, and veterinary care are the responsibility of the integrators, who can use their size to negotiate better terms and can better absorb price shocks. Contract chicken farmers, for example, do not need to worry about spikes in feed costs or deploy complex grain-hedging strategies. And because they raise birds under contract, they do not have to find a market for their flocks as they mature, and they never face the risk of investing months in raising a flock only to not be able to find a buyer. Meanwhile, contract growers provide high-quality, day-to-day care, land, and housing for their birds while being shielded from volatile input prices like feed. This mutually beneficial partnership supports the economic viability and independence of family farms by averting risk and promoting stable and predictable income.

The data shows this contracting model is profitable and works well for all parties. NCC commissioned an independent study using recent chicken production statistics, which indicated that chicken contracting relationships are mutually beneficial, successful, and profitable for both growers and integrators.¹⁴ This study revealed several key points:

- Growers have voluntarily chosen to maintain long-term relationships with their integrators. Most growers are in a position to choose between partnering with two or more processors and can readily cut ties with a bad business partner. Over 50 percent of growers have been with their current integrator for 10 years

¹³C.R. Knoeber & W.N. Thurman, “Don’t Count Your Chickens . . .”: *Risk and Risk Shifting in the Broiler Industry*, 77 AM. J. AGRICULTURAL ECON. 486, 496 (1995).

¹⁴T. Elam, *Live Chicken Production Trends*, FarmEcon, LLC (Mar. 2022), <https://www.nationalchickencouncil.org/wp-content/uploads/2022/03/Live-Chicken-Production-FARMECON-LLC-2022-revision-FINAL.pdf>, available as Appendix A to Exhibit 2, NCC Comments to Docket No. AMS-FTPP-21-0044 Transparency in Poultry Grower Contracting and Tournaments (Aug. 23, 2022).

or more, a statistic unchanged from 2015, with an additional 20 percent (for a total of 70 percent) having been with their current integrator for over 5 years.¹⁵

- Growers rarely have their contracts terminated. In 2021, only 0.7 percent of contract growers had their contracts terminated.¹⁶
- Chicken farming pays well. The median income for chicken farmers exceeds the median income for farm households generally, as well as for U.S. households broadly.
- There is a long waitlist of people wanting to enter chicken farming. In 2021, there were 1,672 applications from potential growers and 335 expansion requests from existing farmers.¹⁷
- Chicken farmers have very low loan default rates. The deficiency percent and charge-off percent for poultry grower loans amount to merely $\frac{1}{3}$ of the average agricultural loan, based on Small Business Administration loan quality data.

These and other data reinforce what the chicken industry has long known: chicken contract farming is a profitable, beneficial arrangement that provides steady and reliable income to family farmers across the country. A series of USDA proposed rules, however, threatens to completely upend this model—a model that has made chicken the most affordable protein in the market.

USDA's Proposed Rules on Chicken Contracting

In 2022, USDA revived a decade-old, abandoned rulemaking effort that directly threatens this efficient, successful contracting system. Although positioned as intended to promote competition and protect growers, the proposals would, in reality, dismantle the very contract farmer system that has proven so successful for all involved.

First, USDA issued a proposed rule titled “Transparency in Poultry Grower Contracting and Tournaments” (“Tournament System Proposed Rule”).¹⁸ Ostensibly positioned as a transparency initiative, this proposed rule would impose substantial recordkeeping costs on chicken companies, would require establishing complex and costly internal auditing frameworks, and seems designed to greatly ratchet up litigation risk for integrators using the current grower contracting model.

This proposed regulation would require integrators to make a substantial number of disclosures at various points during the chicken contracting process and to certify their accuracy, even for forward-looking financial projections. For example, when entering a new contract, integrators would have to provide detailed information about past litigation; bankruptcy filings for all related entities; average payments to all growers company-wide in the past year; average payments to all growers at the complex for the past 5 years or, if that does not reflect anticipated income, projected future grower income under the contract; and information about grower-controlled costs outside an integrator’s control, such as utilities, fuel, water, labor, and repairs and maintenance. A senior executive would have to certify the accuracy of this information, including the forward-looking financial projections. At chick placement, integrators would be required to provide information such as stocking density, breed details, chicken gender ratios, information about the breeder flock facility, breeder flock age, information about health impairments, and how the integrator would adjust payment based on these factors. At settlement, the integrator would have to provide much of the same information, but for all growers in the settlement pool. In addition to these disclosures, the proposal would require integrators establish a costly “governance framework,” complete with audits, testing, and document reviews.

Adding further uncertainty and raising the specter of yet more rulemaking, USDA released a companion to the Tournament System Proposed rule, an advanced notice of proposed rulemaking entitled “Poultry Growing Tournament Systems: Fairness and Related Concerns,”¹⁹ which requested information on dozens of leading questions about the current chicken grower contracting process. Although USDA cited no example of actual Packers and Stockyards Act (PSA) violations, the nature of the questions strongly suggest USDA is considering engaging in yet more rulemaking.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 4.

¹⁸ 87 *Fed. Reg.* 34980 (June 8, 2022); see also *Exhibit 2*, NCC Comments to Docket No. AMS-FTPP-21-0044 Transparency in Poultry Grower Contracting and Tournaments (Aug. 23, 2022).

¹⁹ 87 *Fed. Reg.* 34814 (June 8, 2022); see also *Exhibit 3*, NCC Comments to Docket No. AMS-FTPP-21-0046 Poultry Growing Tournament System Fairness and Related Concerns (Sept. 6, 2022).

Following USDA's proposed rule regarding poultry grower contract disclosures, USDA issued a second proposed rule under the PSA targeting the broader meat and poultry industry and threatening more fundamental changes to the broiler industry. The proposal, titled "Inclusive Competition and Market Integrity Under the Packers and Stockyards Act" ("Inclusive Competition Proposed Rule")²⁰ would create a potential cause of action for virtually any unequal treatment between two growers, even if there were no actual harm to competition. For example, the proposal would create a vaguely defined concept of a "market-vulnerable individual" and prohibit nearly any unequal treatment of a person on account of their being a market-vulnerable individual. The proposal would define a broad swath of everyday business conduct as retaliation, making it more difficult to terminate a contract or even choose not to enter a contract in the first place. The proposal would likewise expand the concept of deceptive practices and ban without defining the use of "pretexts" in many contracting situations. As with the Tournament System Proposed Rule, this proposal would impose substantial recordkeeping burdens, requiring broadly that a company maintain for 5 years "all records relevant to its compliance" with the proposal, without actually defining what those records would be.

Third, USDA has signaled it intends to release a third proposed rule, tentatively called "Unfair Practices, Undue Preferences, and Harm to Competition Under the Packers and Stockyards Act,"²¹ which we understand may attempt to reinterpret Section 202 so that it is not necessary to prove injury to competition to establish a violation, despite universal rejection of this position by every Federal court of appeal to have heard the issue.

Together, these three proposed rules, plus the further rulemaking foreshadowed in the advanced notice of proposed rulemaking, threaten to completely dismantle the existing chicken contracting system, impose billions of dollars of regulatory cost on the industry, and expose chicken processors to a flood of litigation. Ultimately, everyone will suffer: consumers will face higher prices, the best farmers will see their income go down, and chicken companies will have to absorb extreme costs.

Fundamental Problems and Costs with USDA's PSA Proposals

At bottom, USDA's PSA proposals are an attempt to resurrect a misguided rule-making started in 2010 that was blocked by Congress and later abandoned by USDA. The policies were unnecessary and costly then, and they are even more so now. They would achieve nothing but driving up the cost of putting wholesome, nutritious chicken on the dinner table and making it more difficult to earn a living in agriculture. Trial lawyers seem to be the only ones who would benefit.

USDA has positioned the set of proposals as intended to reduce costs and foster competition, but nothing could be further from the truth. Rather, the proposals would inject costs and heighten litigation risk at every step in the chicken production process, discourage innovation, and drive the best farmers out of chicken production. While I am focused today on the impact these rules would have on the chicken industry, they would also prove catastrophic for the beef, pork, and turkey industries.

USDA stated the reason for the Tournament System Proposed Rule is to help growers anticipate their income from broiler contracts and reduce information asymmetries between integrators and growers. The scope of the disclosures would not achieve that goal and would require integrators to collect and disclose items like bankruptcy history, litigation history, payment information for different regions, and breeder flock information, that are entirely irrelevant for determining how much income a grower might earn. Some of the information to be disclosed would already be available in the public domain (*e.g.*, bankruptcy history), while other information like that pertaining to breeder information and grower payments, is competitively sensitive.

The proposal entirely overlooks factors inherent in the system that protect against the hypothetical problems USDA is targeting with the proposal. Integrators own the birds and need a consistent supply of healthy birds to keep their processing plants operating at capacity. Integrators already have every incentive to ensure they are placing healthy birds, providing appropriate feed, and maintaining reputations as good business partners. Further, many growers obtain financing from agricultural

²⁰ 87 Fed. Reg. 60010 (Oct. 3, 2022); see also *Exhibit 4*, NCC Comments to Docket No. AMS-FTPP-21-0045 Inclusive Competition and Market Integrity Under the PSA Proposed Rule (Jan. 17, 2023).

²¹ *Unfair Practices, Undue Preferences, and Harm to Competition Under the Packers and Stockyards Act* (AMS-FTPP-21-0046), OMB Unified Regulatory Agenda Fall 2022 (Jan. 4, 2023), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=0581-AE04>.

lenders, who are experienced in reviewing chicken growing contracts and evaluating their economic viability.

Most importantly, USDA's proposal would make it more difficult to maintain the performance-based pay structure of grower contracts, threatening the entire broiler industry. The sheer breadth of the disclosures amplifies the litigation risk around every single grower interaction, sharply raising the costs of using a performance-based contract. Eliminating performance-based pay would eliminate any incentive for a grower to put in the hard work and make the necessary investments to raise high-quality flocks. This would compromise the overall global competitiveness and the resources of the U.S. chicken industry, shrinking the pool of revenue available to growers and driving up costs while also further squandering our already limited resources during a period of already historic inflation. The current compensation system structure is an efficient and an effective means of rewarding the best growers for performing above average and incentivizing less-efficient growers to improve their performance.

USDA asserts the goal of the Inclusive Competition Proposed Rule is to promote competition and market integrity in meat production and enhance protections for vulnerable livestock and poultry producers. Not only would the proposal fail to achieve these goals, it would fundamentally alter and constrain the chicken production market to the detriment of growers, consumers, and processors alike. The proposal would have devastating effects on the grower contracting process, resulting in increased costs to integrators making it more difficult to fairly reward their contract farmers.

The proposed rule is rife with vague and undefined terms that fail to clearly express what conduct is prohibited. Even the key term used throughout the rule, "market-vulnerable individual," is so broadly defined that nearly anyone involved in the market could be a vulnerable individual in one way or another. The proposal would make every interaction between an integrator and a grower fraught with financial peril, as any perceived differences in treatment could form the basis for a lawsuit. In addition, the rule fails to provide virtually any guidance on when conduct would be unlawful or how an integrator would demonstrate its conduct reflected reasonable business decisions. A chicken integrator acting in utmost good faith and ordering its affairs in the most rational fashion in an effort to comply with the proposed rule could not reasonably anticipate, much less determine with any reasonable degree of certainty, what business practices would ultimately be held illegal under these and other provisions.

Both proposed rules drastically underestimate their economic impact at every possible opportunity. The rules fail to properly account for the costs of contract renegotiations, the time required to implement the extensive recordkeeping and record-retention systems, develop new compliance policies, and implement an administratively complicated oversight and compliance system, all of which require highly paid professionals and substantial attorney time. Moreover, the proposals would make contracting more difficult and could deter companies from entering into new grower relationships, reducing overall economic efficiency in the chicken production market, driving up consumer costs, harming processors, and harming growers. The proposals would also drive costly, frivolous litigation.

Both proposed rules pose substantial costs to growers with no concrete added benefit. USDA estimated the 10 year aggregate combined costs of the proposed Tournament System Proposed Rule to be \$20.4 million, over half of which will fall on chicken growers, and NCC believes this figure grossly underestimates the economic harm this rule would inflict by deterring innovation and undermining efficiencies in the contracting system. It would make it more difficult for integrators to properly reward their best-performing growers, and top performers could see their income drop and decide chicken growing is no longer the right choice for them. Tellingly, USDA even recognizes that the proposal would not actually help growers increase their incomes. In other words, even with an understated economic impact analysis, USDA could not show the proposal helps anyone. It simply makes chicken production more difficult and more expensive for all.

The proposed Inclusive Competition Rule could be even more costly, although USDA's economic impact analysis so understates costs as to be meaningless. This proposal would turn every integrator-grower interaction into a potential litigation flashpoint, forcing integrators to carefully guard every word and evaluate every single grower-related decision as one that could cost the company hundreds of millions of dollars. It would have a tremendous chilling effect on new contracting, as any deviation from the norm could be perceived as disparate treatment in violation of the proposal. Integrators would be reluctant to take on new growers, existing growers would see fewer opportunities to expand their income, and it would become much riskier to sever ties with poor performing growers who fail to properly care for their

birds. Integrators would have to develop massive recordkeeping and compliance-monitoring systems. A dynamic economic system would stagnate, and these lost efficiencies would be shouldered by consumers, growers, and integrators. USDA's economic impact assessment in the proposed Inclusive Competition Rule fails to consider these or virtually any costs. Despite these economic realities, USDA concluded that this proposed rule would cost companies a few hundred dollars a year, in total. This estimate simply defies belief.

The third proposal, although yet to be released, could prove even more economically devastating. Based on experience with the 2010 rulemaking, any attempt to make a regulatory end-run around the need to show injury to competition when establishing a violation of Section 202 of the PSA would create tremendous confusion and uncertainty, injecting billions of dollars of costs into the industry. The costs of this proposal would likely be measured in the billions of dollars, with only the trial lawyers coming out ahead.

Moreover, even assessing the potential costs of the proposals is impossible because USDA has chosen to release these proposals in piecemeal fashion instead of as a single rulemaking on livestock and poultry contracting. This approach has made it nearly impossible for industry to assess the true cost of these regulations and has almost certainly resulted in low-balled cost estimates. By comparison, independent economic analyses of previous USDA rulemakings on similar topics have indicated economic impact costs in excess of \$1 billion,²² and these were prepared 13 years ago, before unprecedented inflation. USDA's PSA proposals could well have the same or greater economic impact, but USDA's piecemeal approach has made it impossible to evaluate.

The proposed rules also suffer from grave legal infirmities and would inject tens of millions of dollars of litigation costs into the industry, adding to the basic compliance costs and costs from efficiency losses. The rulemaking records are devoid of any actual instances of allegedly violative behavior to support such sweeping burdens. The proposals are rife with vague, broad, and poorly defined terms, subjecting companies to substantial uncertainty and staggering litigation costs as the courts would be forced to define the terms USDA declined to. Most troubling, both proposals completely overlook that, as an antitrust law, Section 202 of the PSA is violated only if there is a showing of injury to competition.

Every Federal circuit court of appeals to have construed Section 202 of the PSA has held that no violation of subsections (a) or (b) occurs without a showing of competitive injury. Eight different circuits have addressed the issue, and they have uniformly and resoundingly affirmed this understanding.²³ In surveying court precedent, the Sixth Circuit noted the "prevailing tide" of circuit court decisions holding "that subsections (a) and (b) of § 192 [PSA § 202] require an anticompetitive effect," after which it concluded:

The tide has now become a tidal wave, with the recent issuance of the Fifth Circuit Court of Appeals' *en banc* decision in *Wheeler v. Pilgrim's Pride Corp.*, 591 F.3d 355 (5th Cir. 2009) (*en banc*), in which that court joined the ranks of all other Federal appellate courts that have addressed this precise issue when it held that "the purpose of the Packers and Stockyards Act of 1921 is to protect competition and, therefore, only those practices that will likely affect competition adversely violate the Act." *Wheeler*, 591 F.3d at 357. All told, seven circuits—the Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits—have now weighed in on this issue, with unanimous results.²⁴

The Sixth Circuit became the eighth court to reach this conclusion, and it did so in a case where USDA participated as an *amicus* and directly argued that a showing of injury is not required for a Section 202(a) or (b) violation. The court expressly recognized USDA's involvement, noted USDA's argument that the court should read

²² *Scope of Sections 202(a) and (b) of the Packers and Stockyards Act*, 81 FED. REG. 92566, 92576 (discussing cost estimates prepared by Thomas Elam and Informa Economics).

²³ *Terry v. Tyson Farms, Inc.*, 604 F.3d 272, 276–79 (6th Cir. 2010); *Wheeler v. Pilgrim's Pride Corp.*, 591 F.3d 355 (5th Cir. 2009) (*en banc*); *Been v. O.K. Indus., Inc.*, 495 F.3d 1217, 1230 (10th Cir. 2007); *Pickett v. Tyson Fresh Meats, Inc.*, 420 F.3d 1272, 1280 (11th Cir. 2005), *cert. denied*, 547 U.S. 1040 (2006); *London v. Fieldale Farms Corp.*, 410 F.3d 1295, 1303 (11th Cir.), *cert. denied*, 546 U.S. 1034 (2005); *IBP, Inc. v. Glickman*, 187 F.3d 974, 977 (8th Cir. 1999); *Philson v. Goldsboro Milling Co.*, 1998 WL 709324 at *4–5 (4th Cir., Oct. 5, 1998); *Jackson v. Swift Eckrich, Inc.*, 53 F.3d 1452, 1458 (8th Cir. 1995); *Farrow v. USDA*, 760 F.2d 211, 215 (8th Cir. 1985); *De Jong Packing Co. v. USDA*, 618 F.2d 1329, 1336–37 (9th Cir. 1980); *Pac. Trading Co. v. Wilson & Co.*, 547 F.2d 367, 369–70 (7th Cir. 1976); *see also Armour & Co.*, 402 F.2d 712 (7th Cir. 1968).

²⁴ *Terry*, 604 F.3d at 277 (lengthy string citation of supporting cases omitted).

Section 202(a) and (b) to not require a showing of injury to competition, and pointedly concluded, “We decline to do so.”²⁵

Despite being well familiar with this precedent, USDA through these proposals would force the industry to once more bear the substantial litigation costs to get the courts to again affirm that the PSA requires a showing of injury to competition. These litigation costs are not accounted for in the rulemakings at all.

These proposed regulations are even more troubling because no one has asked for them, and in fact, Congress rejected similar rules stemming from a 2010 rulemaking. USDA previously tried to read into the 2008 Farm Bill a mandate to circumvent the injury to competition requirement and engage in far-reaching rulemaking on the PSA, Congress reacted swiftly and clearly by preventing the agency from finalizing an overly broad rulemaking for several years.²⁶ Moreover, the 2014 and 2018 Farm Bills did not call for any new PSA rulemaking, and they certainly did not indicate Congress supported attempts to read the injury to competition requirement out of the PSA.

Given this clear direction from Congress, USDA’s attempt to read the injury to competition requirement out of the PSA and to effectively expand the PSA into a general anti-discrimination law raises a major question requiring Congressional direction. As recently stated by the Supreme Court in *West Virginia v. EPA*, in certain cases of “economic and political significance,” an agency must demonstrate “clear Congressional authorization” to exercise its powers.²⁷ The PSA is a hundred-year-old law, and at no point in its history has it been applied to broadly address the type of conduct encompassed in the Proposed Rule or to prohibit conduct that does not result in an injury or the likelihood of injury to competition. Through the present series of rulemakings, USDA seeks to completely upend animal production contracting in the livestock and poultry industry. These sectors account for more than \$1 trillion of annual economic impact and touch all fifty states, and they would be drastically affected by a change in the injury to competition requirement, as well as by the other aspects of the proposals. Any attempt to rewrite by regulation the PSA’s injury to competition requirement is the very definition of an issue of “economic and political significance.” USDA cannot take it upon itself to dramatically expand the scope of such a longstanding statute.

At bottom, these proposals reflect tremendous overreach by USDA that promises to encumber a dynamic and innovative aspect of American agriculture with massive amounts of red tape, administrative burden, compliance costs, and legal risks, all for no tangible benefit.

USDA Is Threatening Chicken Processing Plant Line Speeds

USDA has recently initiated a process that threatens to reduce the speed at which chicken processing plants may operate, despite decades of experience showing higher processing line speeds are safe for food and for workers.

Line Speeds in Chicken Processing

USDA regulations cap the speed at which chicken processing plants may operate portions of their processing lines. In particular, USDA regulations cap the speed at which plants can operate the part of the line known in the industry as the evisceration line. The evisceration line is where organs and other parts are removed and where chicken carcasses are presented to a USDA inspector for visual inspection before moving into the rest of the process. This is a highly automated part of the production process, relying on carefully calibrated automated equipment to move the carcasses through the process and to perform the various tasks. These evisceration line speeds are established not for worker safety, or even for a particular food safety reason, but rather to make sure that USDA inspectors are able to perform their carcass-by-carcass inspection, as required under the Poultry Products Inspection Act.

²⁵*Id.* at 278.

²⁶See Consolidated and Further Continuing Appropriations Act, 2015, H.R. 83, 113th Cong. § 731 (2014); Consolidated Appropriations Act, 2014, H.R. 3547, 113th Cong. § 744 (2014); Consolidated and Further Continuing Appropriations Act, 2013, H.R. 933, 113th Cong. §§ 742–43 (2013); Consolidated and Further Continuing Appropriations Act, 2012, H.R. 2112, 112th Cong. § 721 (2011).

²⁷142 S. Ct. 2587, 2613–14 (2022) (explaining that in certain cases of “economic and political significance,” an agency must demonstrate “clear Congressional authorization” to exercise its powers); see also *Nat’l Fed’n of Ind. Business v. OSHA*, 142 S. Ct. 661 (2022) (*per curiam*) (rejecting the Occupational Safety and Health Administration’s claims of regulatory authority regarding emergency temporary standards imposing COVID–19 vaccination and testing requirements on a large portion of the national workforce); *Ala. Ass’n of Realtors v. HHS*, 141 S. Ct. 2485 (2021) (*per curiam*) (rejecting the Centers for Disease Control and Prevention’s claims of regulatory authority regarding a nationwide eviction moratorium).

USDA has never regulated the speed at which any other part of the chicken processing line may operate.

Currently, USDA regulations set the maximum line speed for chicken evisceration lines at 140 birds per minute (bpm) for plants operating under the modernized New Poultry Inspection System (NPIS).²⁸ However, USDA also has long operated a waiver program allowing plants to operate at up to 175 bpm. This waiver system began with a trail program announced in 1997 called the HACCP Inspection Models Project (HIMP), which became a long-running trial to evaluate modernized inspection systems. Under HIMP, 20 chicken processing establishments were allowed to operate at higher evisceration line speeds of up to 175 bpm. The HIMP trial formed the basis for USDA's NPIS regulations, and the HIMP trial continued all the way until NPIS was finalized in 2014.²⁹ But because NPIS capped evisceration line speeds at 140 bpm whereas HIMP plants had long operated at higher speeds, USDA created a new waiver program that permitted former HIMP plants and, later, other NPIS plants that met certain food safety metrics to operate evisceration lines at up to 175 bpm. This waiver program was to form the basis for further rulemaking to increase evisceration line speeds across the board, but USDA has yet to issue such a regulation, and the waiver program continues to this day.

Importantly, the HIMP trial and the line speed waiver program have shown that running evisceration lines at 175 bpm does not compromise food safety or worker safety.³⁰ It does, however, let plants increase processing capacity by 25 percent over the current 140 bpm limit. This lets plants get much greater output from the same equipment, substantially decreasing costs, increasing efficiency, and driving down food prices for consumers. This efficiency is critical. Higher production capacity means lower production costs for integrators, more chickens for growers to raise, and lower prices for consumers. It is also essential for ensuring U.S. chicken processors remain competitive globally. Broiler chicken plants elsewhere in the world—including South America, Asia, Canada, and Europe—are able to safely operate at line speeds of over 200 bpm using the same equipment used in the U.S.

Just as critically, evisceration line speeds do not affect worker safety. Chicken processing plants can be divided conceptually into two segments, commonly referred to as first processing and second processing. The evisceration portion of the operation occurs in first processing, which is the most highly automated portion of the operation. Only about two percent of a typical chicken processing plant's workforce is stationed in the evisceration area, and other than the bird-by-bird inspection and sorting performed by the plant's workforce, they are largely monitoring the operation of the equipment and not directly interacting with the carcasses or machines. To reiterate, the evisceration line speed limit applies only to the evisceration portion of the line. After evisceration, chicken carcasses pass the USDA inspection station, where USDA inspectors visually inspect each carcass, and from there they move to the chilling system to bring the product temperature down to refrigerated temperatures.

The majority of the labor involved in processing chicken occurs in second processing, where birds are trimmed, deboned, and cut into pieces. Plants use varying combinations of automated and manual processes in second processing. Importantly, evisceration line speeds have nothing to do with the rate of work in second processing. One evisceration line feeds into multiple second processing lines, which work at rates independent of the evisceration line. Chicken processors adjust their second processing capacity by adding or removing second processing lines or workers based on the planned production volume. If the evisceration line is running faster, the processor will add more workers on the line and/or increase the number of operating second processing lines. If the evisceration line runs slower, fewer workers or second processing lines may be needed. Therefore, line speeds and work rates do not increase in second processing when evisceration line speeds increase, but the number

²⁸ 9 CFR § 381.69(a). These line speeds are for the USDA inspectional system known as the New Poultry Inspection System, which has become the most common system used in the chicken industry, although USDA also provides inspection under other legacy inspection systems with lower line speed limits.

²⁹ *Modernization of Poultry Slaughter Inspection*, USDA Food Safety and Inspection Service (FSIS), 79 FED. REG. 49566 (Aug. 21, 2014).

³⁰ A landmark 2001 study by the Research Triangle Institute (RTI) reinforced what the industry and USDA had experienced with HIMP with respect to food safety, finding that "inspection under the new models [HIMP] is equivalent and in some ways superior to that of traditional inspection . . . and can maintain or even improve food safety and other consumer protection conditions relative to traditional hands-on inspection methods." Cates, *et al.*, *Traditional Versus Hazard Analysis and Critical Control Point-Based Inspection: Results from a Poultry Slaughter Project*, J. FOOD PROTECTION, 64(6), 826–832 (2001).

of workers needed does. Faster evisceration line speeds thus translate directly into more jobs on the second processing line.

Common sense says that faster evisceration line speeds do not compromise worker safety. The data reinforces this. The chicken industry has a long and successful track record of continual improvement of worker safety. Department of Labor (DOL) Bureau of Labor Statistics (BLS) data shows a continued decrease in injury and illness rates in chicken plants. From 1994 (the oldest data available on the BLS website) through 2019 (the most recent data without noise injected by the COVID-19 pandemic),³¹ the total recordable poultry processing illness and injury rate decreased from 22.7 cases per 100 full-time workers per year in 1994³² to 3.2 in 2019,³³ a 91 percent decrease. And the more than five-fold decrease in injury rates in the poultry industry from 1994–2019 coincided with a period of substantial increases in line speeds, bird size, and automation. Technological improvements in processing tend to correspond to safer workplaces.

The effects, or lack thereof, of line speed waivers can be better isolated by comparing worker safety data from 2014, the year NPIS was finalized and before line additional line speed waivers were issued, and 2019, by the end of which 34 chicken processing plants were operating under line speed waivers. In 2014, the total recordable case rate among chicken processing plants was 4.3 cases per 100 full-time workers.³⁴ In 2019, it was 3.2. Despite nearly three dozen plants operating under line speed waivers, overall worker illness rates continued to decrease during this period.

USDA's Line Speed Study

Despite more than a quarter century of experience with higher line speeds, USDA has embarked on a vaguely defined, open-ended study of the effects of chicken processing evisceration line speeds on worker safety as a condition for deciding whether to continue the program.³⁵ In response to a lawsuit by labor activists,³⁶ USDA decided to condition plants' ongoing eligibility for line speed waivers on those plants agreeing to participate sight unseen in an undefined worker safety study by third-party contractors engaged by USDA. As part of this study, plants were asked to submit voluminous quantities of worker safety data to USDA, required to allow third-party researchers unfettered access to processing plants, and made to agree in advance to participate in a more rigorous onsite visit yet to be defined.

This reflects a dramatic regulatory overreach, using plants' reliance on discretionary evisceration line speed waivers from a food safety agency as leverage to force participation in a worker safety study outside USDA's mission area. Chicken processors were required to commit to participate in the study without seeing nearly enough details to understand what it entailed. Even now, the study protocol has yet to be released. But declining would mean cutting processing capacity by 20 percent, which could be financially ruinous for a company and all those who depend on it for their livelihoods. The data requests are broad, ill defined, and burdensome. Some of the requested data includes sensitive medical information that even the DOL's Occupational Safety and Health Administration (OSHA) is prohibited from accessing without special safeguards. The onsite visits by the third-party contractors have focused almost entirely on second processing, which as explained is entirely unrelated to evisceration line speeds. And questions have arisen whether some of the third-party contractors, who have participated in court cases adverse to chicken processors, are appropriate participants in this study. Even though USDA announced this study in July 2022, the agency has yet to provide any information about the

³¹ During the COVID-19 pandemic, COVID-19 illnesses among plant employees were typically treated as recordable illnesses, regardless of where or how the worker got sick. As with many public health measures, the COVID-19 pandemic has injected considerable noise into the data, and so a truer comparison can be obtained by looking at the most recent pre-pandemic data.

³² *Industry Injury and Illness Data—1994*, U.S. Bureau of Labor Statistics (Feb. 1, 2023), <https://www.bls.gov/iif/nonfatal-injuries-and-illnesses-tables/soii-summary-historical.htm#94> Summary Report.

³³ *Industry Injury and Illness Data—2019*, U.S. Bureau of Labor Statistics (Feb. 1, 2023), <https://www.bls.gov/iif/nonfatal-injuries-and-illnesses-tables/soii-summary-historical.htm#94> Summary Report.

³⁴ *Industry Injury and Illness Data—2014*, U.S. Bureau of Labor Statistics (Feb. 1, 2023), <https://www.bls.gov/iif/nonfatal-injuries-and-illnesses-tables/soii-summary-historical.htm#94> Summary Report.

³⁵ *Constituent Update*, USDA FSIS (July 29, 2022), <https://www.fsis.usda.gov/news-events/news-press-releases/constituent-update-july-29-2022>.

³⁶ *United Food and Commercial Workers Union, Local N. 227, et al. v. USDA*, Case No. 1:20-cv-02045 (D.D.C.). NCC joined this case as an intervenor to ensure the interests of NCC member companies were appropriately represented.

actual study protocol, timing, endpoints, or how the agency plans to use the study to inform policy development and rulemaking. The result has been widespread confusion, significant cost and time spent, and tremendous uncertainty about the future of evisceration line speeds in the chicken industry. This uncertainty has prevented companies from making informed long-term investment decisions for their own processing plants as well as what grow-out capacity they will need from their contract growers.

None of this was necessary. USDA itself decided to conduct this study; no party in the litigation compelled this action. As explained, there has been a tremendously long history of experience with elevated line speeds, in both the United States and other countries. The 20 plants that participated in the HIMP trial were closely scrutinized for decades, yet no worker safety issues emerged. Nor have worker safety issues emerged in the years since USDA began issuing line speed waivers under NPIS. Instead, recordable illness and injury rates in the chicken industry have steadily decreased, regardless of how fast evisceration lines are operating. Other countries, including Canada and many in Europe, have long permitted chicken processors using the same equipment to run much faster than even 175 bpm, with no negative effects on worker safety.

Through sister agencies in DOL, USDA could have easily accessed detailed information about plants' worker safety history, including plant-level illness and injury rates, and compared that information across time as plants transition to line speed waivers and between plants with and without line speed waivers. USDA has never explained why it decided it was necessary to use its economic leverage to compel plants to participate in an ill-defined study conducted by third parties on a topic well outside USDA's mission area instead of simply asking its sister Federal agency directly responsible for worker safety, DOL, to share or analyze the relevant information already in DOL's possession.

As a result, USDA has injected tremendous economic uncertainty into the chicken industry. Chicken companies that have invested heavily in installing new equipment and reconfiguring lines to run at 175 bpm have no idea whether the program will continue or their investments will evaporate overnight. This uncertainty makes it very difficult for companies to plan, and it deters investment in modernized equipment and plant expansions. If line speed waivers were revoked and plants forced to operate evisceration lines at 140 bpm, the economic effects would be catastrophic. Industry capacity would drop dramatically, jobs in second processing would be lost, rural communities would lose their economic engines, chicken farmers would have fewer birds to raise and see their earnings plummet, export competitiveness would drop off, and consumers would have to pay more for chicken. NCC urges Congress to ensure chicken processing line speeds are protected and that line speeds are expanded so that all chicken processors can run at the line speeds we already know are safe.

Potential Policy Changes Regarding *Salmonella* in Raw Chicken Risk Food Security

The final item I wish to raise for your attention is USDA's proposal to dramatically shift its policy toward *Salmonella* in raw chicken, which risks drastically affecting food security, food availability, and consumer prices. In October 2022, USDA announced a proposed *Salmonella* Framework that signaled a fundamental change in how the agency might regulate *Salmonella* in raw poultry.³⁷ Similarly, in a speech last summer, Deputy Under Secretary for Food Safety Sandra Eskin announced that USDA intended to declare *Salmonella* as an adulterant in a very specific category of breaded and stuffed chicken products that are sold frozen and not fully cooked, such as chicken cordon bleu. Although the *Salmonella* Framework raises a number of issues of concern, I will focus primarily on USDA's suggestion that it might declare *Salmonella* an adulterant in raw poultry.

Background on Salmonella in Chicken

The U.S. food supply is the safest in the world, and food safety is a top priority for the broiler chicken industry. NCC members are committed to continuing to enhance their food safety systems, and NCC works continuously with USDA to improve the control of pathogens in chicken products and to address other food safety issues. This is a shared challenge and a shared commitment. NCC supports food

³⁷ See Proposed Regulatory Framework to Reduce *Salmonella* Illnesses Attributable to Poultry, USDA (Oct. 14, 2022), <https://www.fsis.usda.gov/inspection/inspection-programs/inspection-poultry-products/reducing-salmonella-poultry/proposed> (noting in "Component 3, Enforceable Final Product Standard," that USDA is considering implementing a final product standard regarding *Salmonella* in raw poultry products); see also Exhibit 5, NCC Comments to Docket No. FSIS-2022-0029 Proposed *Salmonella* Framework (Dec. 16, 2022).

safety regulations that are based on sound science, robust data, and are demonstrated to positively impact public health. Americans eat 150 million servings of chicken every day, and nearly all of them are eaten safely. But NCC members want every meal to be safe, and our members continue to work to drive down foodborne illness.

For years the industry has implemented a multi-hurdle approach focused on the continual reduction of *Salmonella* from farm to fork—implementing robust vaccination, biosecurity, sanitation, and other effective measures. In just the past few years, USDA has significantly tightened existing *Salmonella* standards; introduced new performance standards for chicken parts; rolled out a new, scientifically driven, modernized poultry inspection system that allows for greater testing and analysis; released detailed guidance on controlling *Salmonella* through processing controls; and approved numerous new interventions; among many other endeavors. This approach has been enormously successful. Based off the most recent USDA testing results,³⁸ *Salmonella* prevalence on young chicken carcasses is 3.1 percent and *Salmonella* prevalence on chicken parts is 7.1 percent across all broiler processing establishments. These testing results are well below the *Salmonella* performance standard for both young chicken carcasses and chicken parts. Currently over 90 percent of the industry is meeting or exceeding the USDA performance standard for both young chicken carcasses and chicken parts.³⁹

On a per-consumption basis, chicken is safer than ever. While the overall incidence of salmonellosis in people has remained relatively unchanged since the Centers for Disease Control and Prevention (CDC) starting tracking it using the FoodNet Fast system in 1996, Americans eat significantly more chicken and chicken products today than in 1996. In 1996, chicken consumption in the U.S. was 69.7 pounds per person. USDA estimated that Americans would consume 102.4 pounds of chicken per person in 2023.⁴⁰ This reflects a 42 percent increase in chicken consumption over the past 26 years, with no increase in salmonellosis. This means that on a per-consumption basis, salmonellosis illness rates attributable to chicken have dropped significantly over the past 26 years. This is an important point that sadly has been overlooked in how USDA has talked about *Salmonella* in recent years.

This data shows that USDA’s existing framework for approaching *Salmonella* control has been working, and NCC has encouraged USDA to continue using the latest science and industry-Agency collaborations to drive improvements in this framework. For example, science-based changes such as transitioning to an enumeration-based performance standard would apply new technological and scientific developments to USDA’s proven approach and would drive continued food safety improvements.

Issues with USDA’s Proposed Salmonella Framework

The proposed *Salmonella* Framework would abandon tried-and-true approaches for legally infirm and technologically infeasible strategies with no clear supporting data. Under the proposed *Salmonella* Framework, USDA has telegraphed its intent to declare *Salmonella* an adulterant in raw poultry when *Salmonella* is present above certain yet-to-be-specified levels. Such an approach would be a dramatic and unwarranted departure from USDA’s longstanding approach toward *Salmonella* in raw poultry, an approach that has been recognized by the courts and supported by science. Critically, despite releasing the proposed *Salmonella* Framework last October, USDA has still yet to provide any scientific data supporting its proposed approach. The lack of data supporting a considered approach is especially troubling given the grave consequences the approach contemplated in the *Salmonella* Framework would have on food availability, food prices, and food security.

The *Salmonella* Framework appears premised on legally infirm conclusions that *Salmonella* may be considered an adulterant in raw poultry. Under the Poultry Products Inspection Act (PPIA), a product is adulterated if it “bears or contains any poisonous or deleterious substance which may render it injurious to health.”⁴¹ The statute notes, however, that for substances that are not added, “such article shall not be considered adulterated . . . if the quantity of such substance in or on such

³⁸ *Sampling Results for FSIS Regulated Products*, USDA FSIS (2022), <https://www.fsis.usda.gov/science-data/sampling-program/sampling-results-fsis-regulated-products>.

³⁹ *Salmonella* Verification Testing: October 31, 2021 through October 29, 2022, USDA FSIS (2022), <https://www.fsis.usda.gov/news-events/publications/salmonella-verification-testing-october-31-2021-through-october-29-2022>.

⁴⁰ *Data Products*, USDA ERS, <https://www.ers.usda.gov/data-products/>; see also *World Agricultural Supply and Demand Estimates*, USDA (Dec. 9, 2022), <https://www.usda.gov/oce/commodity/wasde/wasde1222.pdf>.

⁴¹ 21 U.S.C. § 453(g)(1).

article does not *ordinarily render it injurious to health.*⁴² Thus, for naturally occurring substances, the pathogen is an adulterant only if the substance is present in quantities that “ordinarily” render the product injurious to health.

As USDA has consistently recognized, *Salmonella* is not an adulterant in raw poultry because it is not an added substance and occurs naturally within the chicken biome. *Salmonella* can exist in a chicken’s skin, muscle tissue, and gut, and healthy, asymptomatic birds are known to carry *Salmonella*.⁴³ As USDA has also consistently recognized, *Salmonella* is not present in levels that ordinarily render chicken injurious to health because customary cooking practices call for thoroughly cooking raw chicken, which destroys any *Salmonella* that may be present. Cooking raw chicken to an internal temperature of 165 °F achieves a 7-log reduction in *Salmonella*.⁴⁴

USDA has suggested it plans to approach *Salmonella* in raw chicken similarly to how it approaches certain strains of *E. coli* in raw ground beef. But there are critical differences between the two. Unlike with ground beef, consumers have long customarily cooked chicken in a manner that achieves thorough cooking and destroys *Salmonella*. Chicken is customarily cooked through. Consumers are regularly reminded to use a meat thermometer to cook chicken to an internal temperature of 165 °F—including on the package itself—which achieves lethality. While NCC’s strong recommendation is that consumers use a meat thermometer, other less analytical ways to gauge “doneness,” such as cutting into the meat to see if it is visibly white and firm, are also highly likely to achieve lethality and certainly cannot be said to “ordinarily” result in the product being injurious to health. Chicken is not customarily cooked “rare” or “medium,” and waitstaff at restaurants do not ask patrons how they would like their chicken cooked because the default approach is to cook chicken all the way through. Certainly, it is not the case that due to handling and cooking practices, *Salmonella* “ordinarily” causes the chicken to be injurious to health.

USDA has offered no information supporting a change in its longstanding position that *Salmonella* is not an adulterant in raw chicken. The proposed *Salmonella* Framework is nearly devoid of data, and USDA has not provided any scientific information to support this change in classification, including risk assessments, product testing, or scientific analysis. Nor has USDA provided any data to indicate why it has floated the idea of setting its adulteration threshold at one colony forming unit (cfu) per gram, or why this would be appropriate for all forms of raw chicken. This is regrettable, as without supporting data, the proposed *Salmonella* Framework appears almost entirely speculative. What data is available suggests that salmonellosis cases attributable to chicken consumption are actually going down when considering the overall number of servings of chicken consumed. NCC firmly believes that it is imperative that public health decisions and policy follow the data, not the other way around.

Additionally, there appears to be a significant misunderstanding about how the broiler industry operates, the industry’s supply chain structure, and current industry practices regarding the control of *Salmonella*. As a result, the policy contemplated in the proposed *Salmonella* Framework would result in untold amounts of food waste. Raw chicken is a highly perishable product with a short shelf life, and supply chains are not set up to hold substantial quantities of raw chicken. An enforceable finished product standard would require testing and holding of enormous quantities of raw chicken until results are received. There simply is not enough cold storage in the country to accomplish this, and a widescale test and hold program, in addition to being extremely expensive, would significantly degrade product shelf life and quality. Companies may be forced to destroy product or divert the product to be fully cooked, which accounts for only a modest amount of chicken production and would quickly find both demand and processing capacity outstripped.

Likewise, if *Salmonella* were declared an adulterant in raw poultry, USDA would expect a recall if a product were found to exceed the standard, and it is entirely unclear how the agency would determine what products to recall. Chicken processing plants produce enormous volumes of chicken each day, processing birds from multiple chicken houses each day. The birds from a day’s production commingle at various points, such as in the chilling systems, and it is impossible to break up a

⁴²*Id.* (emphasis added).

⁴³See, e.g., Erol, et al., *Serotype distribution of Salmonella isolates from turkey ground meat and meat parts*, BIOMED RES. INT. 2013, 281591 (2013); Nde, et al., *Cross contamination of turkey carcasses by Salmonella species during defeathering*, POULT. SCI. 86, 162–167 (2007); Rigney, et al., *Salmonella serotypes in selected classes of food animal carcasses and raw ground products, January 1998 through December 2000*, J. AM. VET. MED. ASSOC. 224, 524–530 (2004).

⁴⁴FSIS *Cooking Guidelines for Meat and Poultry Products (Revised Appendix A)*, USDA FSIS, Table 3, https://www.fsis.usda.gov/sites/default/files/media_file/2021-12/Appendix-A.pdf.

day's worth of production into microbiologically distinct production lots. The problem compounds because different parts of birds go to different uses in the supply chain. NCC is extremely concerned that under the proposed *Salmonella* Framework, a single test result could cause the recall or destruction of an extremely large amount of product. There are much better ways to focus efforts on driving down levels of *Salmonella* without raising these extremely complicated issues and so carelessly wasting food.

As written, the proposed *Salmonella* Framework threatens the economic viability of the entire poultry sector and would result in increased costs and reduced availability of chicken. This would be an extremely unfortunate outcome, especially in light of recent record-setting, across-the-board inflation and the continuing food insecurity afflicting millions of American families. Chicken is America's most affordable and most consumed animal protein. It is nutritious and versatile, and it is a staple protein for many, and critically for those families trying to make the most out of every food dollar. Moreover, chicken makes up a significant portion of food bank donations and purchases for Federal and state nutrition assistance programs. Aspects of the proposed *Salmonella* Framework threaten to undermine chicken availability.

A finished product standard would likely cause substantial amounts of product to be diverted to cooking operations. However, there is limited use and demand for precooked chicken, and that demand is largely saturated. Moreover, there is limited capacity to actually produce cooked chicken. Combined, these factors mean that hundreds of millions of pounds of chicken would simply be destroyed each year, reducing chicken supply, and driving up costs.

NCC member companies share USDA's goal of reducing *Salmonella* levels on raw chicken and, ultimately, driving down salmonellosis cases. The chicken industry has made tremendous advances in reducing *Salmonella* presence, and the industry continues to drive down *Salmonella*. However, NCC has serious concerns about many aspects of USDA's proposed *Salmonella* Framework. This proposed policy contemplates actions that exceed USDA's statutory authority, that would be extremely difficult and perhaps impossible to implement, and that are not consistent with modern food safety approaches. Moreover, the lack of supporting information and data make it extremely difficult to meaningfully evaluate the policies and suggest the agency is changing its longstanding process of using science to inform policy. The one certainty about this policy is that it would result in hundreds of millions of pounds of chicken being thrown into landfills each year, exacerbating food insecurity and driving up the cost of chicken.

Salmonella in Certain Not-Ready-To-Eat Breaded and Stuffed Chicken Products

In addition to the *Salmonella* Framework, USDA has also indicated it is considering declaring *Salmonella* an adulterant when present above a threshold level in certain not-ready-to-eat (NRTE) breaded and stuffed chicken products that require cooking but may appear ready-to-eat (RTE) to a consumer because of breading (e.g., chicken Kiev or chicken cordon bleu). A subset of NCC members produce various types of these products, which are consumed safely nearly every time they are eaten. NCC and its members have worked for more than a decade to develop and refine best practices for these NRTE but appear RTE products, including labeling guidelines and intervention strategies, all of which are designed to ensure that consumers can prepare and consume these products safely. These efforts have successfully resulted in a substantial reduction of foodborne illness outbreaks related to this product category, reducing the incidence of ten *Salmonella* outbreaks in these products between 1998 to 2015 down to just one from 2015 to present.

While USDA's proposal is not yet public, we understand USDA is considering declaring *Salmonella* an adulterant when present at more than one cfu per gram in these products. Like with the broader proposed *Salmonella* Framework discussed above, USDA has not provided any scientific information to support this position. This change would also have serious economic impacts on industry, reducing availability of safe, nutritious products for consumers and eliminating jobs in rural communities. Based on a survey NCC conducted, on an annual basis, NCC member companies produce over 75 million pounds of finished NRTE but appear RTE stuffed chicken products, which equates to almost 193 million servings and an estimated finished product annualized value of almost \$284 million dollars. Declaring *Salmonella* an adulterant in these products would undermine their commercial viability and would likely result in the closure of five total production lines, job losses for almost 550 full-time-equivalent employees, and the departure of smaller producers from the market entirely. NCC estimates the net economic costs of this proposal at more than \$100 million annually to those NCC member companies. It is unclear why USDA is devoting so much attention and effort to a niche product category that

is not likely to materially affect overall public health. The poorly thought-out policy works against several goals of the current presidential Administration and Congress by increasing food prices, decreasing competition, and eliminating jobs in rural areas.

NCC has long sought to work with USDA to develop a science-based policy that enhances food safety of these products and benefits consumers without the drastic negative impacts described above. In particular, NCC has identified alternative approaches that use mandatory safety labeling to ensure consumers properly prepare these products, an approach recommended by one of USDA's own committees. NCC has twice petitioned USDA to adopt regulations establishing labeling requirements for NRTE stuffed chicken breast products that may appear RTE and issue a Compliance Guideline for developing and communicating validated cooking instructions for such products, neither of which has been acted on, and a copy of NCC's most recent petition is attached for further reference.⁴⁵ Alternatively, or in addition to, these labeling interventions, USDA could work with industry to conduct baseline sampling on raw chicken source material to assess the presence of *Salmonella* before products enter a manufacturing facility and develop performance standards for raw materials based on that information.

* * * * *

In short, the broiler industry is committed to continuing to produce safe, wholesome, high-quality protein for American consumers and supporting rural economies across the country. Congress can help us achieve these goals by ensuring Federal regulatory requirements are based in science and common sense, are achievable, and do not jeopardize the industry efficiency we have worked so hard to build. To supplement my testimony, I am enclosing as attachments rulemaking comments, reports, and petitions providing more detail on the chicken industry and our concerns with the regulatory approaches I have discussed.

Thank you for this opportunity to appear before the Committee and for your continued efforts to support America's meat and poultry industry. Chicken is the most important protein in the world, and we are proud of the work our industry does to feed, employ, and support hard-working Americans. I look forward to answering your questions.

EXHIBIT 1: NCC 2020 U.S. BROILER CHICKEN INDUSTRY SUSTAINABILITY REPORT
September 21, 2020



Table of Contents
Introduction

⁴⁵ *Exhibit 6*, NCC Petition Re: NRTE Stuffed Chicken Breast Products (Feb. 25, 2022).

Air, Land and Water
 Broiler Health and Welfare
 Employee Safety and Wellbeing
 Food and Consumer Safety
 Community Support
 Food Security
 What's Next?

Introduction

A Letter from Mike Brown, President of the National Chicken Council



It has been a decade since I was named President of the National Chicken Council. In those 10 years, much has changed. And no changes hit as profoundly—or as quickly—as those that we both responded to and initiated in 2020.

Change arrives in fits and starts. We can see it coming and it can surprise us. I have been constantly impressed by and grateful for the resilience and the creativity of our industry when responding to change—both the long view solutions that are best implemented slowly and the rapid deployments demanded by immediate need. We have shown ingenuity and commitment in the face of change, regardless of the challenge.

Nowhere has the industry's commitment to innovate been better revealed than in our sustainability efforts. So, in a time of quick and unquestionable change, the moment seems right to celebrate those efforts in a way that gathers an overview of our sustainability progress, stories and commitments.

What you will read in the following pages represents National Chicken Council's (NCC's) inaugural sustainability report. It is the culmination of many years of work and, also, humbly, the starting point for many more years of collective effort by the U.S. chicken industry. Effort that brings to life our commitment to environmental and social responsibility, and recognition that continuous improvement is critical to address today's sustainability challenges. Effort made to ensure both a healthier industry and a healthier planet into the future. Effort that proves, again, our mission to always change for the better.

As this report is coming out, NCC and many of our members are also actively engaged in a multi-year effort by the U.S. Roundtable for Sustainable Poultry & Eggs to capture the sustainability of all U.S. poultry through a framework that will help us guide future work and change.

So, about all this change . . .

The chicken industry has a long history of adapting to difficult situations and meeting changing demand. 2020 was no different in that way. The COVID-19 outbreak reminded us that our food system has long been "critical" and "essential" before those words became part of our daily pandemic vocabulary.

Our top priorities in 2020 were two-fold: keeping our essential workers safe and keeping chicken stocked in the meat case. Chicken producers and their industry allies went above and beyond to ensure America's No. One protein continued flowing to store shelves.

In this, it was imperative that a proper balance was struck between ensuring a steady supply of food while maintaining the health and welfare of the people who work tirelessly to produce and deliver that food. Chicken producers did everything they could to keep workers healthy and safe while keeping America fed—in that order.

The impact of this balance? Half of Americans who eat chicken say they ate it more than any other protein during the COVID-19 challenges of 2020. In fact, during the first 9 months of COVID-19 in the U.S., retail chicken sales increased 19.5% from the same period in 2019. We more than kept pace with Americans' demand for chicken while simultaneously implementing crucial safeguards that protected our workers.

If we can rally and adapt this effectively in a time of crisis, I have no doubt we can combine our historical knowledge with newfound capabilities born of the pandemic and apply them to sustainability opportunities in the brighter times ahead of us. In fact, what you will find in these pages should be inspirational, highlighting our successes to date and the promise of innovations to come.

Innovation is at the core of our inception as an industry—and remains at our core today.

In 1923—just shy of 100 years ago—Cecile Long Steele of Delaware faced down a surprising challenge and ended up inventing the modern chicken industry. She ordered 50 chicks for egg production and received, instead, 500 due to a clerical error. She kept and raised the chicks, selling them for meat. Within 2 years, she was raising 10,000 meat-type chickens.

In her world, chickens generally ended up in a stew pot only when they got older and their egg-laying days were dwindling. But happenstance and her entrepreneurial ingenuity harnessed by the Roaring 20's economy, advances in refrigeration, and improved transportation technology—and the rest is broiler history.

Cecile Long Steele's pioneering spirit nearly a century ago still drives us. Over the past decades, our industry has made huge strides in embracing innovation to increase the sense of responsibility that is also at our core—a responsibility to care for the planet, our workers, and our most important asset: our chickens.

You will see this pioneering spirit and commitment come to life here through the passion of small farmers, the technology breakthroughs of processors, the impactful commitments of distributors, and more.

This report is by no means exhaustive. Nor is it our final report. For the chicken industry, sustainability means being responsible stewards of land and water, animal and feed management, our people, and communities into the future. Sustainability is a journey—our journey as a national industry and member of the international community.

My home in Delaware isn't too far from where Mrs. Steele started raising her chickens. I have a special appreciation for the land and water on the Eastern Shore, and I see firsthand everything chicken producers do to protect and preserve it.

And while the modern version of our industry may have started very near where I write this in Delaware, it now extends to nearly every corner of this country and, in fact, much of the world.

You will see in the pages ahead, based on new data from the *Broiler Production System Life Cycle Assessment: 2020 Update*, that the efforts and leadership of those who carry on and improve upon this tradition are making measurable progress.

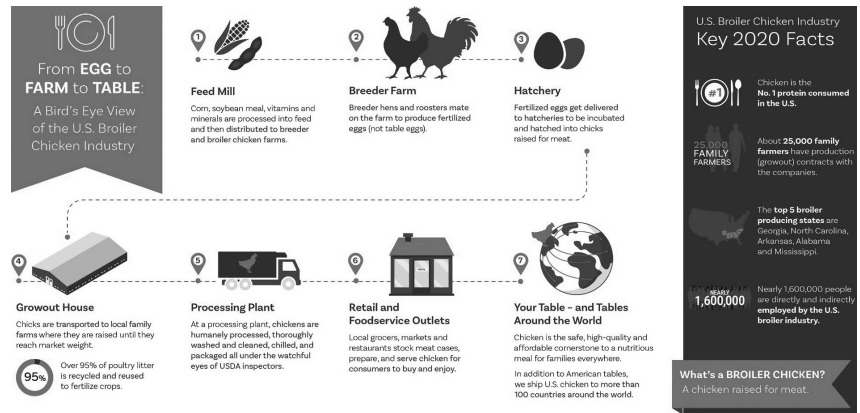
The numbers tell us that collectively we have made significant improvements in key sustainability intensity metrics (environmental footprint per bird) between 2010 and 2020.

We are feeding more people and we are raising each bird with less environmental impact and resources.

Having come so far in the past 10 years, we are nevertheless committed to achieve additional progress in the next 10 and beyond.



MIKE BROWN,
President of the National Chicken Council.



From EGG to FARM to TABLE.
A Bird's Eye View of the U.S. Broiler Chicken Industry

1 Feed Mill
Corn, soybean meal, vitamins and minerals are processed into feed and then distributed to breeder and broiler chicken farms.

2 Breeder Farm
Breeder hens and roosters mate on the farm to produce fertilized eggs (not table eggs).

3 Hatchery
Fertilized eggs get delivered to hatcheries to be incubated and hatched into chicks raised for meat.

4 Growout House
Chicks are transported to local family farms where they are raised until they reach market weight.

5 Processing Plant
At a processing plant, chickens are humanely processed, thoroughly washed and cleaned, chilled, and packaged all under the watchful eyes of USDA inspectors.

6 Retail and Foodservice Outlets
Local grocers, markets and restaurants stock meat cases, prepare, and serve chicken for consumers to buy and enjoy.

7 Your Table - and Tables Around the World
Chicken is the safe, high-quality and affordable cornerstone to a nutritious meal for families everywhere. In addition to American tables, we ship U.S. chicken to more than 100 countries around the world.

Key 2020 Facts

- Chicken is the **No. 1 protein consumed** in the U.S.
- 25,000 FAMILY FARMERS** About **25,000 family farmers** have production (growout) contracts with the companies.
- The **top 5 broiler producing states** are Georgia, North Carolina, Arkansas, Alabama and Mississippi.
- NEARLY 1,600,000** people are directly and indirectly employed by the U.S. broiler industry.

What's a BROILER CHICKEN?
A chicken raised for meat.

95% Over 95% of poultry litter is recycled and reused to fertilize crops.

Our Approach to Sustainability

If you're not taking care of your soil and your air, then you have nothing. And, making sure that we do that, either through our cropland production or in our chicken houses, it's just our lifeblood. It's important for us to run a farm that is sustainable because we have children who will inherit this farm, and we want to make sure they can have this farm in 100 years.

RACHEL RHODES.

Throughout every step of the chicken supply chain, our industry is looking toward the future.

With the help of technology, modern breeding, nutrient management, feed conversion and improved animal husbandry practices, the U.S. chicken industry has significantly reduced the use of water, farmland, electricity, and other valuable natural resources, while reducing greenhouse gas emissions, over the last century. This past decade our industry has been particularly effective in these areas.

But our commitment to the future certainly does not end with our commitment to our planet and our birds. For us, “sustainability” encompasses the many ways that we conduct business responsibly—yes, for our planet and our birds, but also for the many people and communities affected by our work and our products.

Sustainability is a journey of collective successes and growth areas, which are driven by and include the many companies, organizations, and individuals who are diligently pushing our industry and international community toward a more sustainable future.



Our stakeholders are global—defined by the people who work in our industry, consume chicken, or are in any way impacted by the industry. We have made a conscious effort to elevate those voices in this report with information supported by data and actual human experience.

As farmer Rachel Rhodes articulates so eloquently, this industry is our lifeblood. Our commitment to feeding our country, and the world, is meaningless if it does not serve to benefit those who will follow in our footsteps for generations to come.

Arbogast Farms

LAUREN ARBOGAST, *Family Partner / Farmer*



A Culture of Sustainability: Generation by Generation

Sustainability can be a tricky word. Practices vary from farm to farm and region to region, leaving a bit up to decision-makers and agriculture families. But regardless of the personal definition or area of impact, the root of sustainability packs the same punch—striving to do what’s best for the next generation, one step at a time.

Our farm, Arbogast Farms, began in the 1970’s with a few beef cattle and a lot of free-range turkeys. As the farm evolved over the years, the turkeys moved into cutting-edge barns, the cow herd dwindled, and farm management started the then-radical practice of no-till for the crop fields. In the early 2000s, the one remaining turkey house was converted to a chicken house, four new state-of-the-art chicken houses were built, and the beef cow herd was also strategically upgraded. Fields that had been no-till for decades now added in crop rotations and cover crops. And in 2020, our farm installed solar panels on all five chicken houses, lessening our impact on the electrical grid.

As a working multigenerational farm, there are many pieces to the puzzle of working together for the common goal of sustainability. Without a doubt, each member of the farm advocates for practices that ensure the next generation will have more opportunities on the same land and resources. Little by little, decision by decision, our farm has made sustainability common practice.

We at Arbogast Farms are looking toward the future with optimism. We have the next generation coming up on the farm, learning and watching, and, also, inventing and doing.

We hope we have created a culture that looks at innovation and sustainability as a baseline, not an end goal. We look to continually improve our practices in this generation and into the next, leaving our land and resources in a better position than where we found them.

Aviagen

Committed to Sustainability

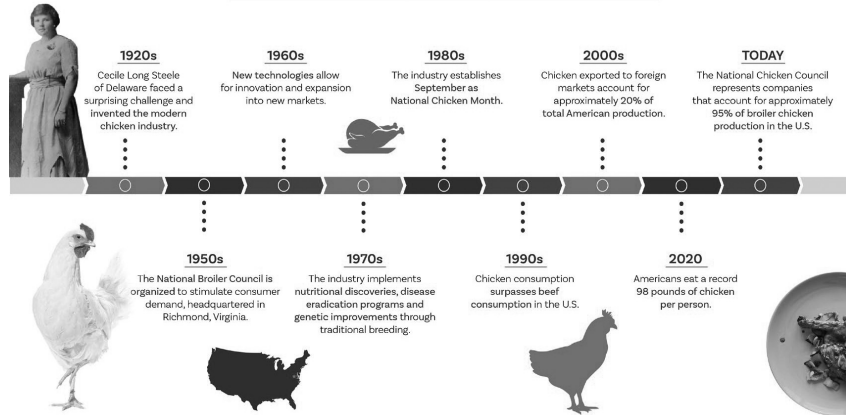
One of the most exciting environmental sustainability projects in our industry undertaken globally is a campaign by Aviagen to gather information to better define their sustainability footprint.

This new project is their most comprehensive to date, taking into consideration their in-house footprint, while also considering the sustainability benefits to the industry with broiler chicken genetic advancements.

Knowing where we stand today helps us know where we need to be going.

Aviagen and others taking on the task of defining their footprint help us all determine our most impactful direction.

Our History of Innovation



What You'll Find in This Report

We organized this report around the six broad topics that are most important for our industry:



Air, Land and Water

Our industry's environmental impacts and contributions to a healthy planet through emissions reductions and responsible use of water and land resources including the results of the *Broiler Production System Life Cycle Assessment: 2020 Update*.



Broiler Health and Welfare

Our industry's animal husbandry practices that support broilers' health, nutrition, comfort and overall well-being.



Employee Safety and Wellbeing

Our commitment to worker safety and well-being, and the ways that we keep workers safe.



Food and Consumer Safety

The many ways that our industry supports consumers' health, by providing affordable, safe and essential nutrition.



Community Support

This is about our industry's support for local communities through the creation of jobs and donations of money and food to businesses, charity organizations and others.



Food Security

Our industry's contributions to ensuring uninterrupted access and availability of affordable, nutrient-dense food.



These are the areas where our industry’s efforts matter most—for supporting industry growth and for producing and providing food to people responsibly, in ways that protect communities and the planet and ensure food is available when people want and need it.

These also are the broad topics that consumers and our many other stakeholders have told us are important to them. While our industry’s environmental impacts (Air, Land and Water) might be top of mind for many people, we recognize that other individuals might feel as strongly, or more strongly, about animal welfare or one of the other topics we have included here.

We also recognize there is overlap of these material topics, with progress in some areas helping to drive progress in others. For these reasons, all six topics are important and discussed in this report to demonstrate how the industry is innovating to meet needs and expectations.

As you will read, poultry operators across the entire value chain are making commitments and taking action. From feed mills to breeder farms, hatcheries, grow-out houses (the barns where broiler chickens live and grow), processing plants, and retail/foodservice operators. From large integrators to small

family farms. Organizations of all sizes and types are making meaningful progress and contributing to the industry’s collective journey of continuous sustainability improvement.

Foreword on Global Impact



The U.N. Sustainable Development Goals (SDGs) guide our responsibility approach. Collectively, the 17 SDGs provide a blueprint for a better and more sustainable future for all people and for the planet. The SDGs present a challenge and an opportunity for all of us—a global call to action to drastically decrease poverty, hunger, climate change and inequality by 2030.

By delivering on these goals, we believe we can have the biggest positive impact.

These are the areas where our contributions are most important for improving lives and fostering environmental stewardship.

The U.S. chicken industry is doing its part to drive progress, and we intend to continue our efforts.

To guide the path forward on behalf of the entire U.S. chicken industry, the NCC actively seeks partnerships and alliances with other organizations, to identify opportunities for synergy and leverage collective strengths.

Feeding people, and doing so equitably and sustainably, requires combined effort. The constellation of activities involved in producing, processing, transporting, and consuming food (*i.e.*, entire food systems) must all operate cohesively and in sync.

Food systems must withstand many disruptions—everything from extreme weather events to pandemics like COVID-19, biosecurity issues, and cybersecurity breaches. The U.S. chicken industry stood up to all of these challenges in 2020 alone.

<p>We are particularly inspired by four of the SDGs:</p>	
<p>Goal #2 <i>Zero Hunger</i></p> <p>End hunger, achieve food security and improved nutrition, and promote sustainable agriculture.</p>	<p>Goal #8 <i>Decent Work and Economic Growth</i></p> <p>Promote sustained, inclusive and sustainable economic growth, full and productive employment, and decent work for all.</p>

Goal #12 <i>Responsible Consumption and Production</i>	Goal #17 <i>Partnerships for the Goals</i>
Ensure sustainable consumption and production patterns.	Strengthen the means of implementation and revitalize the global partnership for sustainable development.



The U.N. is calling for transformation of the world’s food systems to be healthier (nutrient-based), more sustainable, and more equitable.

As an active member of the **Animal Agriculture Alliance**, we are aligned with the animal agriculture community, which seeks to promote practical, broad-based, action-oriented solutions backed by science, innovation and proven impact—solutions that include producers of all sizes and types at many points in their journey for continuous improvement and more sustainable systems.



The U.S. Roundtable for Sustainable Poultry & Egg (US-RSPE) is another one of NCC’s key partners. We are working closely with them on the first-ever sustainability reporting framework for the full U.S. supply chains for chicken, turkey and eggs, which will launch

in early 2022.

The NCC will continue to look for opportunities to collaborate with others to achieve greater progress toward sustainable development.

By collaborating whenever possible, and by supporting our members’ efforts to deliver sustainable, safe, affordable, and nutrient-dense food, we are continuing to drive the solutions that the world needs.



Leadership Profile

National Chicken Council



ASHLEY PETERSON, *Senior Vice President of Scientific & Regulatory Affairs*

An Appreciation for Seasons, Blisters and Wholesome Food

Growing up in rural Kentucky, spending countless hours with my granddaddy on our small farm and working until my hands were blistered, I quickly learned how to appreciate where my food came from and the sacrifices it took to feed our family—generation after generation.

The acres and acres of vegetable gardens were never weeded or tilled enough as the summer crops were going to be canned, frozen, or otherwise preserved to feed everyone for the coming year. I thought I’d never get to the bottom of the bushels of ripe tomatoes, shuck enough corn, or shell enough black-eyed peas and lima beans under the big oak trees surrounding the old farmhouse.

When it got cold, it was time for butchering. I'll never forget one Saturday afternoon I was hanging out in the chicken house (a common place to find me as a kid—which, in hindsight, Leadership Profile makes sense of my work in this amazing industry), and the rooster decided he didn't like me hanging out with his ladies . . . and spurred me up my leg.

Not sure how old I was, but I went to the house and found my granddaddy. Without a word he headed off to let that rooster know who was boss. My grandma made the best chicken and dumplings ever—not to mention the fried okra. I'm not sure why but she couldn't make good fried chicken to save her life—not that you'd want to make fried chicken with a mean old rooster anyhow . . . but he went well with those dumplings.

Every year a steer and three hogs would be subject to my granddaddy's appreciation, expertise, and dexterity. I'll never forget the time I was finally "old enough" to help slaughter a steer—that was something for a 10 year old. We'd hang the steer in the tobacco barn off the bucket of an old John Deere Crawler until it was cold enough for butchering.

For the hogs, we had a large trough we'd put over a fire to heat up the water for scalding. Once we started the butchering and had enough fat separated from the carcasses, it was my job to render the fat—separate the lard from the cracklins.

Now if you've never had fresh hot (and I mean burn the skin off your mouth hot) cracklins, you haven't lived.

Once rendered, we'd ladle the fat into a lard press (which also served as the sausage stuffer) lined with cloth and collect the lard would be used for cooking and topping off jars—my grandma even made lye soap. We also made our own sausage, and I've never had the same since.

Looking back over these experiences, one thing was for certain—I learned to keep cold things cold, hot things hot, and keep things clean when it came to food preparation. I learned that though the animals we raised were raised for a purpose, they would always be treated humanely and with the respect they deserved.

In today's world, most people do not have these experiences, and I am thankful for the blisters, countless working hours, and appreciation it instilled in me about where our food comes from and all of the hard work that goes into feeding the world safe and wholesome food.

Air, Land and Water

It takes a healthy planet, fresh water, fertile soil, and clean air to raise and produce chicken.

Through continuous innovation, the chicken industry has become significantly more efficient in its use of water, farmland, electricity, and other valuable resources over time, and has reduced greenhouse gas emissions.

New Life Cycle Assessment Shows Substantial Progress Across All Key Impact Categories

For this report, we commissioned an updated sustainability assessment of U.S. broiler production to better reflect current production systems. And what a difference a decade of dedication can make.

Using new life cycle inventory data, highly regarded third-party expert Dr. Greg Thoma and his colleague Ben Putman quantified the environmental impact of U.S. broiler production across a broad range of impact categories. The results of the assessment are documented in the *Broiler Production System Life Cycle Assessment: 2020 Update*,¹ a fresh Life Cycle Assessment (LCA) that showcases where we are now, how the sustainability impacts have changed in the past 10 years, and where we might focus next to make continuous improvements.

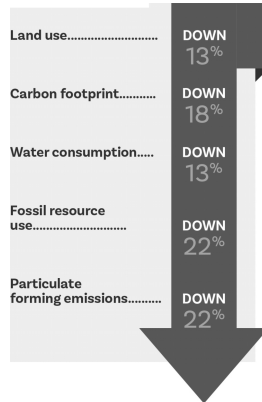
An LCA is a quantitative environmental method used to compile and assess environmental impacts of products, processes, and services over their entire life cycle. The goal of the 2020 LCA was to focus on the chicken industry's three primary levers of sustainability:

1. Feed conversion ratio and average daily gain (including typical market live weight)
2. Feed composition (industry average ration formulation), and
3. Litter production and management.

What happened between 2010 and 2020 in U.S. broiler production? **Broiler production increased 21%.**

¹ https://www.nationalchickencouncil.org/wp-content/uploads/2021/09/Broiler-Production-System-LCA_2020-Update.pdf

In addition, all key sustainability intensity measures improved between 13% and 22%. For every kg live weight of broiler (and cull breeder hen) produced during the 10 year time period:



Per kg live weight broiler and cull breeder hen: Land use decreased from 2.13 to 1.85 m²a crop eq; carbon footprint decreased from 1.23 to 1.00 kg CO₂ eq; water consumption decreased from 0.29 to 0.25 m³; fossil resources use decreased from 0.27 to 0.21 kg oil eq; and particulate forming emissions decreased from 2.36 to 2.03 g PM_{2.5} eq.

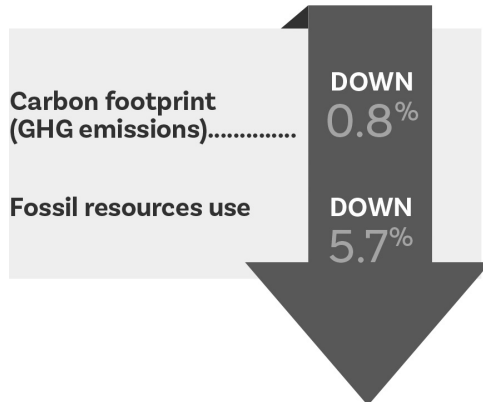
Keep in mind that these improvements were made on the heels of substantial improvements made between 1965 and 2010. According to the prior life cycle assessment, producing the same amount of chicken in 2010 as in 1965 was already having 50% less impact on the environment. By 2010, our industry data showed:

- 75%** fewer resources required in poultry production
- 36%** reduced impact of poultry production on greenhouse gas emissions
- 72%** decrease in farmland used in poultry production
- 58%** decrease in water used in poultry production




The improvement in intensity metrics does not tell the complete story.

We recognize that cumulative sustainability impacts are also very important. In contrast to the intensity metrics relating to each bird (or each kg of bird) produced, “cumulative” measures reflect overall environmental impacts by the entire U.S. broiler industry—the total amount of resources used and greenhouse gases emitted—in a given year.

The 2020 LCA shows that, from a cumulative standpoint, there were improvements in two key sustainability measures, despite the 21% increase in broiler production between 2010 and 2020.



The three other key sustainability measures showed increases during the 10 year time period, from a cumulative standpoint.

-  *Land use up 5.4%*
-  *Water consumption up 5.4%*
-  *Particulate forming emissions up 4.4%*

Percentage change in five key sustainability measures between 2010 and 2020 (total production of broilers and cull breeder hens):

Impact category	2010	2020	Percent change
Land use (m ² a crop eq)	47,157,854,711	49,701,161,527	5.4%
Carbon footprint (kg CO ₂ eq)	27,225,935,616	27,000,732,155	-0.8%
Water consumption (m ³)	6,401,558,672	6,748,789,920	5.4%
Fossil resources use (kg oil eq)	6,035,302,938	5,691,972,956	-5.7%
Particulate forming emissions (kg PM _{2.5} eq)	52,283,488	54,568,949	4.4%

These increases are still far below the increases in broiler production, which is an impressive and promising trend. It is often the case that growth of a sector outpaces the improvement in intensity. Had the impact categories shown increases that kept pace with broiler production in the past 10 years, then all impacts would have seen a 21% increase. Feed is the primary driver of the impacts. What’s happening on the farms in terms of feed, and feed conversion ratio, is driving the progress. As compared to 2010, in 2020, we saw an 8.7% improvement in feed conversion ratio—total broiler production increased by 21%, with only an 11% increase in total feed consumed.



Simply put, our industry is producing more and using less.

We have bigger birds, we have more birds, and we are achieving these gains with greater efficiency and a lighter environmental footprint than ever before.

Chicken production has long had a less significant environmental footprint than almost any other animal agriculture industry. We have made meaningful strides in minimizing environmental impact with the help of technological advancements and improved animal husbandry practices.

Now, let’s dive deeper into why chicken production in the U.S. is more sustainable today than ever before . . .

Point of View

Aviagen

JAN HENRIKSEN, CEO



Our climate is changing, and people and governments around the world are seeking ways to protect our planet.

Because food production is a primary driver of climate change, our challenge will be to feed the world’s expanding population with a reliable and quality source of nutrition, while reducing the effects of production. One promising solution lies with poultry.

Chickens are naturally gentler on the environment than other livestock. On top of that, chicken companies have been working for decades to breed efficiencies that not only produce healthier birds, but also

make commercial chicken production environmentally responsible. Simply, we see poultry as the responsible protein.

Sustainable intensification has become a global aspiration in the quest to increase food production from existing farmland while lowering pressure on the environment.

Over the past decade, broiler breeding companies have put significant resources and effort into creating efficiencies in chicken production that support sustainable intensification.

One such efficiency is a healthy feed conversion rate (FCR). Today’s farmers can raise a healthier and more robust chicken more efficiently.

Another benefit is in the area of land use. As our global population continues to swell, agricultural land will become more and more limited.

With a lower FCR, less land will be needed to grow feed. The grain not used for poultry feed can be used for other purposes, and the land can be repurposed for other crops.

The important conclusion is that poultry's naturally lower resource consumption, coupled with innovative breeding efficiencies, means fewer resources are required to produce an increasing volume of high-quality chicken meat.

- **Poultry greenhouse gas emissions are naturally low.**
- **Chicken production demands far fewer resources.**
- **Using less land means less destruction of natural wildlife habitats.**
- **Chickens are more water-efficient than other livestock.**

Air

The production of all food—whether it's meat, seafood or fruits and vegetables—results in greenhouse gas (GHG) emissions.

Farmers want the best air quality not only for their chickens, but for the health of their family, employees and communities. The following are some of the ways our members act on their commitment to clean air.

The Role of Technology

Even with a relatively small footprint, chicken companies are regularly seeking accessible and affordable technology upgrades that will improve the ways broiler production affects air quality.

1. LED lighting
2. Computer controls
3. Solar panels



LED Lighting

In recent years, most chicken farms have switched to LED lighting, which can result in energy savings of 80–85% compared to traditional incandescent lightbulbs.

Michelle Chesnik's farm in Maryland *LED bulbs on the farm help her realize a 25–35% savings in energy. By using energy efficient lightbulbs, they lower their cost while taking better care of the environment.*

Tim and Deena Morrison's farm in Kentucky *They minimize their energy use by regulating the lighting inside their chicken houses. Dimmable lightbulb technology aids in maintaining a healthy environment for the chickens and decreases inefficient use of lighting.*

Rachel Rhodes' farm in Maryland *LED lights on the farm help mitigate energy usage. And, controllers tell them when the lights go on and when the lights go off. If something's askew it can be checked right away.*



Computer Controls

Modern grow-out houses are mostly controlled by sophisticated computers that make continuous changes in temperature and ventilation to maintain optimal environmental conditions for the chickens, while saving gas and electricity.

Tim and Deena Morrison's farm in Kentucky *Their chicken house is monitored by a master computer that controls the chickens' dimmable lights based on outdoor temperatures, time of day and age of the flock. Along with lighting, the control computer also regulates airflow and temperatures to maximize chicken health over each stage of the flock's life. While chicks grow, their environment also needs to change. The controller makes these environmental changes efficiently and effectively.*

Terry Baker's farm in Delaware *Each chicken house has its own computer and it's the brain of the chicken house. It controls the fans, the light, the feed, the water, the temperature, the heaters—all with an app on his phone—which gives him instant access to maintain the health of the birds, regardless of where he is.*



Solar Panels

Some chicken farmers are installing solar panels in order to limit their energy use, producing their own electricity on-site.

Terri Wolf-King's farm in Maryland She installed solar panels on her farm to help lower the energy bill and environmental footprint. Since installation, she has seen a significant reduction in energy use.

Tim and Deena Morrison's farm in Kentucky Their solar panels have saved the equivalent usage of 60–70 tons of coal per year.

Terry Baker's farm in Delaware The farm is now entirely run on solar.



Ammonia Mitigation

Ammonia is a natural byproduct of chicken production. For farmers, there are many solutions to help improve air quality on their farms and reduce ammonia—starting with planting foliage around their chicken houses to capture ammonia and collect dust. These plants often serve a dual purpose of reducing potential odors.

Farmers also regularly monitor ammonia levels within their chicken houses. Although useful in fertilizers, certain levels of ammonia in the chicken house can be damaging to the chicken, the farmer and the environment. For this reason, farmers use litter treatments to aid in the retention of ammonia, as well as ventilation and monitors to ensure the health of their flock.



We planted Miscanthus, arundo and switchgrass between the chicken houses and in front of tunnel fans to capture ammonia and collect dust and particles. The plants also help reduce potential odors from the houses. Using computer technology, I can track gas levels in the chicken house, like ammonia, from a smartphone.

TERRY BAKER.



We planted greenery around the farm to help lower our carbon footprint. The pollinators, especially, provide a resource for insects and other wildlife that call the local ecosystem home.

JENNY RHODES



Our farm is encircled with a vegetative buffer that consists of hybrid willows and green giant arborvitae. This vegetative buffer acts as a windbreak saving electricity and fuel, helps capture dust and particulates from the fans, and makes the farm more aesthetically pleasing to neighbors.

GEORGIE CARTANZA

Staying Local



In addition to technologies, creative foliage solutions, and various ventilation and ammonia mitigation techniques, localizing production facilities is another way the chicken industry works hard to be efficient with resources. Despite its global reach, American chicken production is an extremely local business.

The distance from the hatchery to the farm to the processing plant is usually no more than 60 minutes away from one another. Localized production between the hatch-

ery, farm, and processing plant reduces time traveled, emissions, and costs. This efficiency and localization ties directly to a reduction of GHG emissions.

Air Leadership Snapshots



JBS Makes Global Commitment to Achieve Net-Zero Greenhouse Gas Emissions by 2040

In March of 2021, JBS announced a commitment to achieve net-zero greenhouse gas (GHG) emissions by 2040. The commitment spans the company's global operations, including Pilgrim's Pride Corporation as well as its diverse value chain of agricultural producer partners, suppliers, and customers in their efforts to reduce emissions across the value chain.



Sanderson Farms Sees Continuous Improvement in Energy Use Reduction

In 2008, a baseline of gas, water, and electricity usage was established at Sanderson Farms. The Company continues to measure against this baseline to improve our operations and to show continuous improvements across all locations. Since 2008, Sanderson Farms has seen a 20.4% reduction in electricity usage, 38.3% reduction in natural gas usage, and 44.6% reduction in water usage (all per WOG lb).

Air Leadership Profiles

Tyson Foods

LEIGH ANN JOHNSTON, *Director, Sustainable Food Strategy*



Tyson Foods' ambition is to be the most sustainable and transparent food company in the world and we're working hard every day to make the ambition a reality. Tyson recently announced a target to achieve net zero greenhouse gas (GHG) emissions across our global operations and supply chain by 2050. Tyson is excited about the work that will be done to achieve this target, but realize we cannot do this alone. Partnership and collaboration is critical and we're looking forward to working with our supply chain partners, NGO's, customers, academia, and other stakeholders in order to make the greatest impact.

Sanderson Farms

STEPHANIE SHOEMAKER, *Manager, Environmental (Regulatory & Permitting)*



Sanderson Farms has been installing Pressure Swing Adsorption systems at every new facility since 2012, which reduces our dependence on purchased natural gas, and creates a renewable energy resource that can be used seamlessly used in the processing facility. The Environmental and Engineering Departments of Sanderson Farms perform daily reviews of utility usage (gas, water, electricity) of all facilities to ensure all are operating as efficiently as possible. Any corrections and adjustments are made immediately to improve efficiencies, without waiting for the monthly utility bill to arrive.

Land

What goes on the land and in the land impacts everything that comes from the land—and how that land might be engaged for generations to come.

No one is more aware of this than our farmers.

As measured by our 2020 LCA Update, assessing land use helps us see how that use—and changes in that use—affect biodiversity. Biodiversity is protected and supported when less land is used for agricultural (and other human) purposes. The 2020 LCA Update showed that our chicken industry is doing a great job conserving land resources.

Specifically, land use per kg of production (broilers plus culled hens) decreased by 13% between 2010 and 2020. Although cumulative land use by the industry increased by 5.4%, production increased by a full 21% to serve the critical societal benefit of feeding people.

Litter management is another important land-related measure for our industry. We learned from the 2020 LCA Update that poultry litter is not a strong driver of

climate impacts. Only the emissions from litter that is classified as “waste” get assigned back to the animal husbandry stage—a tiny fraction, as shown below.*

Litter management is a key sustainability lever that is being impacted directly by our chicken breeders. In practical, on-the-ground terms, chicken litter, or poultry litter, is not a waste product. It is, in fact, an extremely valuable resource in agriculture. This mix of chicken manure, spilled feed, feathers, and material used for bedding in the houses is something our farmers value highly. Most often, our farmers collect and store litter to be used as an organic fertilizer for crops—on their farms or nearby farms. Plants feed the chickens and chickens fertilize the plants—it’s a closed, sustainable nutrient loop.

The nature of transactions regarding poultry litter disposal in the U.S., and their consequences on output classification according to U.N.-supported Livestock Environmental Assessment and Performance (LEAP) guidelines.

Disposal transaction	Fraction of litter from		Classification
	Broilers	Breeders	
Sold	50%	36.3%	Co-product.
Hauled off for a fee	3.2%	4.2%	Waste.
Bartered	36.1%	39%	Residual.
Given away	10.7%	20.5%	Residual.

Our Farmers Speak: Land, Litter and Longevity



“Like many chicken farmers, we’ve installed concrete heavy use area pads (HUA pads) at the entrance of each chicken house. These concrete pads allow for easier collection of chicken litter without any elements getting lost or spread into the ground. This litter is then composted and recycled to be used as a natural and organic fertilizer.”

RACHEL RHODES.



“All poultry litter from my chicken houses is stored and composted, and then used as a fertilizer for my row crops. Litter from poultry farming is a community recycling effort. I often buy litter from other farmers to be used as fertilizer on my crops. To maximize the effectiveness of the litter as fertilizer, I work with outside counsel to create a nutrient management plan.”

TERRI WOLF-KING.



“We make sure that 100% of our chicken litter supply is used as all-natural slow-release plant food on row crops. About half of our litter is sold to a broker who sells the fertilizer to other local crop growers. On Morrison Farm, a soil nutrient management plan is created that optimizes the spread of the rest of the fertilizer.”

DEENA & TIM MORRISON.



“100% of the poultry litter on our farm is recycled and reused. We collect poultry litter from the chicken houses and move it to a secured shed. We then work with a broker to find other farmers who recycle the chicken manure as an organic fertilizer on row crops and mushrooms. Nutrients generated as a byproduct are accurately tracked and reported to the state in our annual nutrient management report.”

TERRY BAKER.

*The 2020 LCA update followed the U.N.-supported LEAP guidelines, which is a science-based methodology that defines three specific options for allocating and accounting for litter emissions: residual, co-product, and waste.

Heather & Mike Lewis on Land Management

In 2020, Heather and Mike's exemplary commitment to environmental stewardship was recognized by the U.S. Poultry and Egg Association when the couple was awarded the Family Farm Environmental Excellence Award. The prestigious award reflects the industry's commitment to serving as responsible stewards of land, water, and feed management, and maintaining and advocating for the humane treatment of our most important asset: our chickens. In their own words, hear how they approach their commitment to the land in particular reduce time traveled, emissions and costs. This efficiency and localization ties directly to a reduction of GHG emissions.

We practice no-till farming on our land to help prevent soil erosion as well as protect the nutrients that are in the soil. Leaving a crop residue on the ground and using a cover crop also helps to improve soil health. The years that we have corn in our fields, we save some of the fodder and grind it up into new bedding for the chickens. We also use recycled pallets for bedding. We bring a shredder in that has a large magnet on it—in go the pallets, out comes nice bedding for our chickens.

HEATHER LEWIS.

We have a Nutrient Management Plan that is written by a trained engineer/agronomist. The expert helps us ensure that we are doing what's best for our soil and the land around it. We windrow our litter between flocks letting it heat up to kill any pathogenic bacteria or organisms and equalize the moisture throughout. Then we reuse it, spreading it back out for even bedding.

MIKE LEWIS.

Land Leadership Profile

Deerfield Farms

JENNY RHODES, *Farmer & Owner*

I am a 10th generation farmer. I am able to farm today because the generations before me took care of the land the best way they knew how. Today, I am able to use the latest research-based information to make my farm the most sustainable it can be. I have learned to lead by setting an example for other farmers to follow.

Every day I am thinking, "What is the next step in sustainability?" Artificial and machine intelligence—even remote sensing—will help us as farmers and growers become even more efficient. I am also very interested in blockchain technology to help trace food from farm to fork. All of this potential makes this exciting and important work.

We recently installed pollinator plots on the farm. The plots provide nectar or pollen for a variety of pollinators like bees, butterflies, and birds. We have a few deer, groundhogs, and turkeys that like to graze the plants. My grandchildren like to walk in the plot, too. This has reduced my carbon footprint on my farm, with no grass cutting in these areas, the plot is a cover crop scavenging nutrients, keeping soil in place and improving soil health.





Foster Farms

From Waste to Agricultural Value

Much of the waste material from Foster Farms poultry ranches is rendered into byproducts that can be used in cattle and aquaculture feed as well as pet food.

Each year, Foster Farms poultry operations produce more than 450,000 tons of manure almost all of which is converted into compost, soil amendments, conventional

and organic fertilizers.

Since 2016, Foster Farms has been working with local California farmers to grow organic feedstock utilizing our organic fertilizers for our organic poultry ranches thereby creating a renewable cycle of sustainability. More recently, Foster Farms has begun working with the Food to Fork project to develop feedstock from recovered commercial food waste. Even feathers are finding a new use.

Owing to feather absorbency, Foster Farms is participating in a U.S. Air Force project aimed at developing flotation mats that could be used to clean up fuel spills over water.

Water

From the farm to market, water is required throughout the various steps of broiler production—and water consumption (per kg of bird produced) is down an additional 13% this past decade.

There are several ways that water is used throughout the production process:

1. To water crops (namely corn and soybeans) for chicken feed
2. For the chickens to drink on the farm
3. To cool the birds via evaporative cooling cells during warmer temperatures
4. To clean and rinse chicken carcasses at the processing plant
5. To clean and sanitize equipment at the processing plant

Water conservation is a pivotal part of running a successful chicken farm. Farmers today monitor and record water usage to ensure their flock is receiving the essential amount of clean water. Wells and waterlines are sanitized on a regular basis. Following are some of the innovative practices farmers implement to sustainably reduce, save and recycle water on their farms:

Computer Monitoring

Growout houses are equipped with computer systems that measure and monitor water usage on the farm. Farmers diligently watch for any abnormal water use patterns to help identify any problems such as water leaks, which saves water.

Nipple Dispenser Systems

Most modern chicken farms use “nipple” watering systems as another watersaving tool. Nipple watering systems are pin-activated water dispensers, much like a rabbit or hamster water bottle with the ball bearing. When the birds press the pin, water is released. This helps limit any water being spilled on the poultry litter, or floor, and it only dispenses water when the birds want to drink.

Cooling Pads

Most grow-out houses are also equipped with cooling systems that consist of cool cell pads, which evaporate water at one end of the house and have large tunnel exhaust fans at the other end. This not only keeps the chickens cool, but also recycles water on the farm.



The Role of Technology at Processing Plants to Improve Air Quality and Water Conservation

- Enhanced air handling systems and ventilation to boost air quality.
- Modernized water reuse, filtration and treatment systems to conserve water and increase water efficiency.

Water Usage and Feed Conversion

Chicken feed is primarily a mix of corn and soybean meal that is formulated by certified animal nutritionists. This ensures that each bird gets the right nutrients at the right time. Nutritious feed results in chickens requiring less food to grow. Chicken feed never contains added hormones or steroids—it's the law.

Growing corn and soybeans for the production of chicken feed is the largest source of water consumption in broiler production. The good news, however, is that broiler production requires a very small amount of feed.

The feed conversion for broilers (amount of feed needed to produce 1 kg of broiler live weight) is among the lowest in all of U.S. animal agriculture. And the feed conversion ratio has decreased significantly in the past decade.

As previously noted in this report, the industry has achieved an 8.7% improvement in feed conversion ratio for broiler production (enabling a 21% increase in production with only 10.7% increase in feed consumed).

All of these factors result in chicken requiring less feed and water to grow to market weight, which results in chicken having less of an environmental impact.



Chickens are the most efficient converters of feed into meat of all land-based livestock species due to several key factors:

- *Traditional breeding*
- *Nutritious feed tailored to each stage of a chicken's life*
- *Better living conditions through climate-controlled barns and new technology, and protection from extreme temperatures, predators and disease*
- *Up-to-date biosecurity practices*



Nutrient Management Plans and Water Quality

Farmers are required, by U.S. Federal law, to follow what are called “Nutrient Management Plans” when fertilizing crops and managing animal manure. These plans specify how much fertilizer, manure, or other nutrient sources may be safely applied to crops to achieve yields and prevent excess nutrients from impacting waterways.

Nutrient Management Plans are generally required for all agricultural land used to produce plants, food, feed, fiber, animals or other agricultural products, and serve as key mechanisms for protecting water quality.

A specific solution that is widely used and helps protect water quality is the use of heavy use area concrete pads (HUA pads) around the entrances to grow-out houses. HUA pads help with water quality by keeping litter from being washed away. Litter that farmers do not immediately use is placed in a shed, which further ensures that the litter does not enter local water sources.

In addition, farmers often minimize water runoff from their farms (and emissions) by planting vegetative buffers between chicken houses, which help to absorb any water, dust, or emissions on the farm.

Our Farmers Speak



“The latest tech allows us to check for leaks in our waterlines, conserve energy usage, and flag potentially harmful ammonia levels. These efforts reduce waste, runoff and emissions.”

RACHEL RHODES.



“We use waterline technology to get chickens the water they need while limiting waste or spillage. These waterlines—nipple systems—allow us to be certain the only water going into a grow house is going into the bird. With this technology, we can easily check that there are no leaks.”

MICHELLE CHESNIK.



“I adopted conservation practices to reduce infiltration of nutrients into groundwater—like construction of manure storage buildings, use of composters, and plenty of HUAs.”

GEORGIE CARTANZA.



“Evaporative cooling pads capture dew and rainwater, recycling an important resource and saving energy. Natural or applied heat to the cooling pad releases this stored moisture and cools the chicken house on hot days, lowering our reliance on additional energy sources and cutting costs.”

JANICE VICKERS.



“Our farm has one well for each of the two chicken houses. By monitoring and recording the water usage on the farm daily, I can see how much water is being used, to ensure the well-being of the chickens without being wasteful. Wells and water lines are inspected regularly, and they are sanitized at least twice a week.”

TERRI WOLF-KING.



“In the Chesapeake Bay area of Maryland, newly established farms in the state are required to have a storm water management plan, so we make sure that all water leaving the farm, including water running off the top of the chicken houses, percolates through a pond.”

JENNY RHODES.



“We installed a number of bogs and plant material to filter water before it leaves the farm. These serve as environmental buffers to guide, utilize, and retain rainwater. Grassy swales help guide and retain storm water and plants maximize the absorption of any nutrients moved by precipitation. We also have a pond that isn’t just scenic—it collects and holds much of the rainwater that falls here and is regularly stocked with a variety of fish to keep it self-sustaining.”

TERRY BAKER.

Water Leadership Profiles

Harrison Poultry
DAVID BLETH, *President & CEO*



My favorite aspect of sustainability initiatives is they actually reduce costs; they do not increase them as many may believe. We believe that clean potable water is our most precious resource and conserving it is a daily conscious effort. Whether at home or work, repairing any dripping issues saves so much water over time. We have invested over \$1 million in water conservation equipment that has reduced our company’s water usage by 78 million gallons annually.

Sanderson Farms
STEPHANIE SHOEMAKER, *Manager, Environmental (Regulatory & Permitting)*



The Environmental and Engineering Departments of Sanderson Farms collaborate to address water conservation and other resource usage. Not only is prioritizing sustainability critical to our success, it is simply the right thing to do. A prominent goal of ours over the next 5–10 years will be to identify new methods to renew, reuse, reduce and recycle waste from our wastewater treatment and processing facilities.

Water Leadership Snapshots

Tyson Foods
Water In Context



A specific example of our current water stewardship efforts is the work we’re doing to establish contextual water targets at several of our plant locations. Contextual water targets consider local environments and conditions in order to make meaningful change in water usage. We’ve currently implemented targets at four priority facilities and will continue to develop targets for additional locations in the future.

Simmons Foods
Clean Water: A Point of Pride



Sparkling, clean water is a point of pride at the Simmons Foods wastewater treatment facility in Southwest City, Missouri. In fact, because of the sustainability efforts of our team members, 2 million gallons of clean, safe water is released back into nature each day. Simmons award-winning facility treats wastewater from adjacent poultry and ingredient processing plants. Since it’s in a rural setting without municipal infrastructure, Simmons Foods built a system dedicated to treating the daily volume of process water flowing out of those production facilities.

As an industry leader that uses about 4 gallons of water per chicken during processing, about twenty percent less than the industry average, it’s significant that Simmons Foods is not only using less water, but also returning clean and safe water

to Cave Springs Branch, a tributary of Honey Creek and Grand Lake in Southwest Missouri.

Since 1982, Simmons team members treat water and liquid organic matter called “process water” in compliance with Federal and state environmental standards. Team members use physical, chemical and biological processes to remove solids, bacteria or any other organic matter before it is released about 350 yards from the processing facility.

In addition to maintaining healthy aquatic ecosystems around Simmons’ Southwest City operations, the facility has achieved more than 2 decades without a notice of violation and has earned the U.S. Poultry Clean Water award twice since 2008.

The water treatment facility is so effective, it’s used to host classes in partnership with the Crowder College Environmental Science Program. In addition to students, community members, local leaders and elected officials are invited to tour the facility to see the process first-hand and hear about our commitment to sustaining the environment.

House of Raeford Farms

Prioritizing Water Wherever We Are



Bob Johnson, CEO and owner, along with a dedicated board of directors, have made the quality of our wastewater systems a priority across the company.

Under the oversight of environmental manager Chris Murray, new and upgraded treatment systems have resulted in dramatic improvements in wastewater quality.

Since 2014, the company has invested nearly \$20 million in upgrading our wastewater treatment facilities at all locations across the Southeast U.S.

This has been a major commitment to safeguarding the environment, especially in water conservation and pollution control.

1 Rose Hill, North Carolina

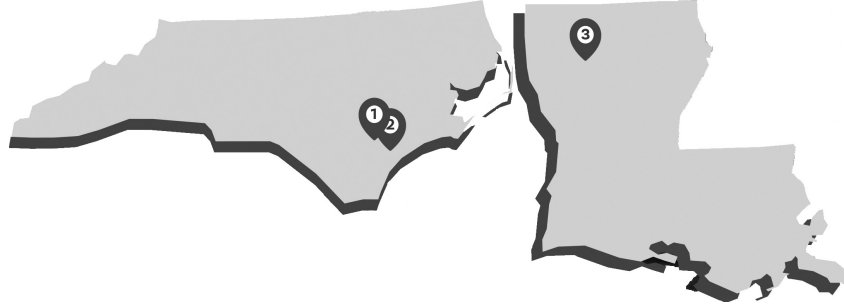
In 2014, we installed a new Diffused Air Flotation (DAF) system at this processing plant in an effort to clean up our staging lagoon and reduce the volume of Plant Available Nitrogen (PAN) released on the spray fields. Within 3 months, the PAN level decreased by over 50%, thereby reducing pollution significantly. Rose Hill is continuing improvements to the wastewater operation by expanding the amount of land used for spraying treated water, thus reducing the concentration in any one area.

2 Wallace, North Carolina

We rebuilt this processing facility after a devastating fire destroyed the plant in 2017. As a result, we decided to upgrade the wastewater treatment operation to allow for future growth and to install new equipment with the latest environmentally friendly features. One of the most significant gains from the improvements was the water reuse system that pushes back 80,000 gallons of treated water per day to the plant. This is a major savings in annual water usage of over 20 million gallons.

3 Arcadia, Louisiana

To control the toxicity of treated wastewater, we added an anoxic basin, the first ever used in the company, to reduce nitrates and achieve toxicity testing compliance. This innovation inspired upgrades in our Greenville, West Columbia, and Hemingway, South Carolina, locations as well as our Forest Park, Georgia, operation.



Broiler Health and Welfare

From when baby chicks arrive at the farm, to the time when broiler chickens are taken to be processed, the health and welfare of the flock is a priority for chicken farmers and poultry companies.

Without healthy, properly cared for broiler chickens, there would be no chicken industry. We recognize that we have an ethical obligation to make sure that the chickens on American farms are well-cared for and treated with respect.

Broiler health and welfare begin at the farm level. Chicken farmers have long recognized the need to properly care for their animals.

The industry continues to innovate and improve animal husbandry practices to help protect the birds' health, nutrition, care and comfort during their lives.

NCC's Animal Welfare Guidelines Certified by Leading Welfare Auditor Organization

To help ensure that broiler chickens receive optimum care during their lives, NCC developed the NCC Animal Welfare Guidelines and Audit Checklist, which have been widely adopted by chicken farmers and processors. The NCC Welfare Guidelines were developed based upon the opinions of the World Organization for Animal Health.

According to the World Organization for Animal Health Terrestrial Animal Health Code, good welfare is when the animal is healthy, comfortable, well-nourished, safe, and not suffering from pain, fear, or distress. Animals must also be able to express behaviors that are important for their physical and mental state. Animals' physical needs are relatively easily discussed, described, and studied, but their mental states and needs can be more difficult to characterize. We recognize this understanding is an ongoing discussion and evolving science. With that in mind, the NCC Broiler Welfare Guidelines are updated every 2 years to include new science-based parameters.

The NCC Welfare Guidelines define the following essential elements of broiler chicken care:

- Raised by personnel trained to properly handle and care for the chickens
- Access to adequate amounts of nutritious feed and clean water
- Room to grow and express normal behavior
- Housing that provides protection from the environment, disease and predatory animals
- Professional veterinary care



The NCC Welfare Guidelines were certified by the Professional Animal Auditor Certification Organization (PAACO), a leading authority on animal welfare auditing, which provides high quality training and certification credentials for auditors and audits.

These guidelines cover every phase of a chicken's life and outline science-based recommendations for proper treatment. The guidelines are updated every 2 years with assistance from an academic advisory panel consisting of poultry welfare experts and veterinarians as well as industry experts from across the U.S.

Chickens Today Are Healthier Than Ever Before

Chicken companies, farmers and veterinarians take pride in the way they care for their chickens so much so that chickens today are as healthy as they've ever been.

All current measurable data—livability, disease, condemnation, digestive and leg health—reflect that the national broiler flock is healthier than in years past.



Leadership Profile

Perdue Farms

MIKE LEVENGOOD, *Vice President, Chief Animal Care, Officer & Farmer Relationship Advocate*



Perdue has been raising poultry for more than 100 years, and I have been for 37 years. We have implemented many innovative technologies that help us address birds' needs, such as improved water systems, environmental controls in the housing, and advances in animal care that yield improved nutrition and health.

As part of Perdue's pioneering Commitments to Animal Care that we rolled out in 2016, we are continuously elevating the standards to which our poultry is raised and remaining open and transparent with our customers and consumers who are interested in knowing about how

their poultry's quality of life.

My main daily focus is communication with our farmers and flock advisors. Our team makes a great effort to not only ensure compliance with our raising standards, but also to make sure that our farming partners understand the "why" behind our drive to constantly raise the bar. My goal is to foster our culture of dedication to animal husbandry. At the end of the day, it's good for the farmers, the birds, and the consumer.

Our thinking extends beyond the "needs" of our birds to include their "wants." We continuously look for ways to do more to keep our birds happy—things like increasing natural light, enrichments and outdoor access. We are also looking very hard at ways to refine our processes, including how we move birds from the farmer's house to the harvest plant, automate catching, and modernize stunning equipment.



Leadership Profile

Merck Animal Health

JESSICA MEISINGER, PH.D., *Veterinary & Consumer Affairs*



I've always loved animals and sustainability, and this job has been the perfect melding of the two. One of my favorite aspects of my role is helping Merck be more sustainable and be a better company. I interact and help connect all of the pieces of the company. We are focused on diversity, equity and inclusion, animal welfare, veterinary well-being, anti-microbial resistance in addition to reducing our environmental impact.

The Merck Sustainability Team of Excellence is cross-functional. People across the company from the human pharmaceutical side to the animal health side are involved. We have a real opportunity to make a difference in our products and packaging that promotes greater animal health while achieving our sustainability goals. Packaging is a big concern of our customers. One initiative we are working on is looking at ways to reduce, eliminate or produce recyclable packaging for our animal health products.

One of the biggest trends in animal health is incorporating new monitoring and identification technologies. These new technologies are bringing efficiencies to our customers' operations that are focused on animal health and prevention. Innovations like these help us continue to be the best and most sustainable company we can be.

In my personal life, living sustainably can be challenging because I have a 2 year old and a 3 year old—but I want them to learn by example and see everyone's efforts matter. Our family has started composting, and we have a garden where we grow our own vegetables. We buy a lot of items like clothes second-hand and use them for as long as possible. I research and support brands that are socially responsible, including Merck products.

What's Good for the Chicken Is Good for the Farmer



Put simply, a farmer's livelihood depends on the health of their flock.

Farmers dedicate their lives to the safety and health of their chickens and, with that, Americans can feel secure about the meat they are buying for themselves and their families.

There is a tremendous amount of science and animal husbandry that goes into breeding and raising today's chickens.

Through traditional breeding, breeders ensure bird size and growth rate never comes at the expense of the birds' health or welfare.


Farmer Profile
RACHEL RHODES

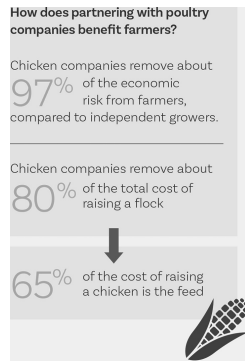


Our top priority as farmers is 100% focused on our birds' health and well-being—watching our freshly-hatched chicks arrive, caring for them, making sure that they have enough food and water, and that they have the perfect environment to grow and thrive so we can provide healthy, affordable food for the consumer.

The health of our birds is just as important as the health of our children, because our birds are just like our children. When our children aren't feeling well, I make a little 'treatment sheet,' detailing when they receive medication, how much they are given, etc. The same goes for our birds. When they aren't feeling well, we carefully monitor how much water they drink, if they're not as active, if they're given a probiotic, and how much they're given.

These practices ensure that we're proactively meeting the well-being of our birds by providing them with the care and commitment that we would give our own family.

 **How Do Chicken Farmers, or Contract Growers, Partner with Chicken Companies?**



A contract chicken grower is an independent farmer who chooses to invest and build chicken houses, working under contract with a chicken production and processing company to raise chickens for them.


More than 90% of all chickens raised for meat in the U.S. (broiler chickens) are raised by contract farmers, who are thriving in helping to produce America's No. One protein. In fact, chicken companies have waiting lists of potential family farms who want to partner with them and enter into the chicken business.

Chicken companies work closely with their farmers to build relationships based on a shared goal of success, and these relationships have helped family farms succeed.

This system has allowed us to insulate farmers from the risk of changing market prices for chicken and feed ingredients, such as corn and soybean meal, which represent the vast majority of the cost of growing a chicken. In other

words, farmers are guaranteed a consistent price for their efforts, no matter what the markets are doing.

Those who perform better receive bonuses. The system has worked well for decades and kept tens of thousands of families on farms who otherwise would have had to get out of agriculture altogether.

 **Farmers take on about 20% of the cost of raising a flock**

Ongoing Commitment to Research and Improving Broiler Care

For decades, chicken producers have evolved on-farm care, transport, handling, processing and genetics to improve welfare outcomes while meeting everchanging consumer preferences.

Whether it's looking at space and housing, studying different nutrition programs, breeding for the healthiest birds, or working to eradicate diseases, the industry remains committed to continual improvement to do what is best for the bird, and ultimately, the consumer.

The Role of Technology at Processing Plants to Enhance Animal Welfare

Installed cameras and monitoring systems to observe the handling of the birds to optimize their welfare and offer auditing transparency.

Tyson Foods

Leading the Way In Animal Welfare Through the Tyson Foods Broiler Research Farm



Tyson Foods' Broiler Welfare Research Farm is a testing ground for research on key aspects of broiler chicken welfare, such as lighting, enrichments and stocking density. The research is based on an approach that allows animal choice to guide our actions. Because chickens can't tell us what types of housing they prefer, we create a variety of options within one environment and then observe animals' behavior. We use a science-based approach to evaluate the impact of the different choices on measurable outcomes of animal welfare and health.

We are conducting ongoing research of the optimum lighting conditions for chickens' welfare. Findings suggest birds are best able to display their natural behaviors in housing with a gradient lighting from bright to subdued, so they can feed in the bright area and rest where there's less light.

We're also conducting ongoing enrichments research to evaluate natural behaviors. Objects like ramps, huts and boxes are placed in the house to provide a more interesting or "enriching" environment for the chickens. Initial results of the research have shown a strong preference toward the huts.

Employee Safety and Wellbeing

The U.S. chicken industry puts safety above all else. We are always looking for ways to improve safety across the supply chain in order to keep our employees safe and supported.

Our collective commitments and investments in safety have made a big difference over the years, especially in processing plants. Chicken processors continue to focus on the prevention of workplace injuries. By acknowledging the benefit of implementing ergonomics and medical intervention principles, while continually implementing new technology and automation in the workplace, processors have dramatically improved employee safety.

The Industry's Safety Record Speaks for Itself

- 1
The poultry processing sector has achieved an 86% decline in Occupational Safety and Health Administration (OSHA) recordable injuries and illnesses over the past 25 years, and injuries and illnesses continue to decline, according to the most recent report released by the U.S. Department of Labor's Bureau of Labor Statistics (BLS).
- 2
 The total recordable poultry processing illness and injury rate for 2019 was 3.2 cases per 100 full-time workers (per year), down from 3.5 in 2018. This was below the total recordable illness and injury rate for the entire food manufacturing sector, which was 4.0 cases per 100 full-time workers per year.
- 3
 In fact, injuries in poultry processing have fallen below the levels of "all manufacturing," not just food manufacturing, for the first time since OSHA began recording rates.



Leadership Profiles

Pilgrim's

LISA BURDICK, *Head of HR, Safety and Operational Excellence*



Lisa Burdick says that diversity is one of the company's greatest strengths: Our life experiences are as unique as we are, but we all have one thing in common: we've found opportunity here. *A perfect example of this is Jordan Shaw,*² a production supervisor at our Nacogdoches, Texas, facility.

In 2016, Shaw found himself homeless and sleeping in a park. He started on the cone lines at Pilgrim's cutting shoulders, but he wanted to show the team that he was a hard worker, a team player and he could motivate the people around him. Jordan's determination led him to earn

Employee of the Month, and shortly after, he became a lead person on the production floor.

Jordan says working at Pilgrim's taught him discipline and transformed him into a role model for his family. Our team members, like Jordan, are what I love about my job: helping open doors of opportunity.

OK Foods, a Bachoco Company

BRYAN BURNS, *General Counsel and Vice President, Environmental Health and Safety*



In late 2018, I was asked to lead our Risk and EHS Department. Our EHS, Operations, and Human Resources Teams collaborated and engaged in coordinated efforts to promote a safety culture within our company and to reduce our injury rates. In a 2½ year period, we have achieved more than a 50% reduction in our OSHA recordable injuries, and our OSHA and DART rates are now better than industry averages. We did this through a boots-on-the-ground approach that included eliminating hazards, improving training, and encouraging employees to report any hazards or concerns. Most recently, we began regular

wall-to-wall inspections by the CEO and other members of the Executive Team, who walk through the facilities alongside our hourly team members to identify potential hazards and listen to their concerns.

²<https://jbsstories.jbssa.com/2021/04/11/jordan-shaw/>.

For us, sustainability starts with protecting our own people and making sure they have a safe and healthy workplace. We believe nothing we do at work is more important than taking care of each other.



The Role of Technology at Poultry Processing Plants to Enhance Employee Safety

- Computerized rehang, portioning, and debone machines to decrease repetitive motion issues and protect workforce safety

Harrison Poultry

Researching Innovative Tech Solutions to Improve Employee Safety

At Harrison Poultry, we are going all-in on several artificial intelligence robotic projects. We have a team of engineers and industry veterans at our company who work together to brainstorm possible project ideas, and then give them the freedom to pursue them. Also, we are heavily involved with state university engineering departments, partnering on various cutting-edge projects.

We believe artificial intelligence machines that have the ability to teach themselves how to improve on their daily performance is the most exciting 5 year trend. Vision system technology that communicates directly with equipment is starting to impact our world in really positive ways. Plus, we are developing “smart” machines that will be able to do the strenuous, heavy lifting, which will take the burden off our workers and help to keep them safe.

Evonik

Highlighting the Sustainability Benefits of Bulk PAA in the Protein Industry

Poultry processors use peracetic acid (PAA) solutions to maintain food safety compliance. Peracetic acid is the most widely used antimicrobial chemistry within the U.S. poultry industry. Over the past decade, expanded regulation and additional treated applications resulted in larger volume usage of PAA in processing plants. This increased volume, combined with a drive to improve safety and efficiency, led to the implementation of our bulk system, which provides a safe and sustainable solution to processors.

Our first bulk system was installed at a customer site in 2012. Since then, we have transitioned much of our product volume to bulk and safely installed our systems at over 20 locations. Bulk delivery of PAA eliminates the need for one-way totes—and that’s a big deal in terms of what’s good for poultry customers, our business, and the environment.

From an environmental footprint perspective, in addition to the tote materials, there are also significant transportation and water waste aspects to consider. Totes are shipped between manufacturing, customer, and recycling facilities, and these totes must be rinsed multiple times during their lifespan. These material, transportation, and water savings may seem meager, but consider that just one poultry bulk customer facility eliminates over 1,300 totes annually through this program.

Keeping Workers Safe and Healthy During the Pandemic

As COVID-19 stay-at-home orders expanded and increased demand for fresh chicken resulted in empty grocery store shelves, thousands of industry workers answered the call as federally designated frontline workers to help meet the demand. Workers showed up to help maintain a steady supply of food to keep our fellow Americans fed, and collectively our industry worked diligently to keep them safe.

Chicken companies are keeping workers safer than ever because of additional protective measures adopted in response to COVID-19. Companies have been following CDC and local health department guidelines. Many have also consulted with infectious disease physicians to develop site plans.

Their heightened protective measures include:

- Increasing cleaning and sanitation frequencies and intensities for equipment and common areas, such as the breakroom and vending machines, at processing facilities.
- Increasing frequency of handwashing/sanitation and expanding access to hand sanitizing stations.
- Encouraging employees to stay home if they are not feeling well or believe they may have been exposed to the virus, while still receiving pay.
- Heightened employee screening for any signs of illness, including temperature checks before entering the plant.
- Practicing social distancing not only in common areas, such as breakrooms and cafeterias, but also on production lines where possible.
- Implementing travel restrictions and only allowing essential personnel into the plant.
- Educating employees about the virus and ways to avoid catching it, along with posting [] educational information in a variety of languages.
- Training company nurses on CDC protocols for COVID-19.
- Providing personal protective equipment (PPE), including masks and gloves, installing plastic dividers between workstations and in breakrooms.

Supporting Employees' Overall Wellbeing

We recognize that supporting our employees is a broad responsibility, which covers much more than safety programs, training, and other hallmark protections of safe workplaces.

Chicken companies are finding additional ways to care for employees and their families—to show appreciation for hard work in helping to support an entire nation, and to support employees' health and wellness.

Although policies vary, companies are doing things like offering paid sick leave, bonus/hazard pay and free chicken for employees, waiving the waiting period for short-term disability, and making personal time off policies more flexible.

Fieldale Farms

Prioritizing Employee Health and Wellness

Fieldale Farms is prioritizing health and wellness by establishing Fieldale Family Health Centers to provide employees and their families with low-cost medical services. Starting in 2004, Fieldale Farms established a family health center in Baldwin, Georgia. It was such an overwhelming success in meeting employees' needs that Fieldale opened a second family health center in Gainesville, Georgia, in 2012, and then a third one on-site at the Fieldale Murrayville, Georgia, processing plant in 2020.

The Fieldale Family Health Centers provide a comfortable, inviting, and easy access point for employees and their families to seek care. The cost for medical treatment at these centers is only \$15 per visit, and many are open for extended hours to provide medical services for employees working all shifts.

Employees also get access to nutritional counseling, diabetes counseling, tobacco cessation products and services, and gym memberships. Every year over 500 employees take advantage of free mammogram services.

Perdue Farms

Caring for Employees During COVID-19



Take a look at how Perdue Farms responded to care for their workers during the pandemic:

We extended the hours of many of our on-site Wellness Centers, which are staffed with local healthcare providers and are available to our associates and their families free of charge.

- We provided support to associates who were directly impacted—either due to illness or CDC-mandated quarantine requirements.
- We maintained an ongoing dialogue with associates and our communities about the impact of COVID-19 on our business and provided important information to our associates in multiple languages to educate them on safety requirements and CDC best practices for when they were at work, at home, and out in the community.
- We temporarily waived the 5 day waiting period of short-term disability for any associate who contracts

COVID-19, so that he or she could receive immediate benefits.

- All hourly associates received a temporary \$1 per hour pay increase and all Piece Rate associates, such as truck drivers, a \$40 per week pay increase.
- We fully funded our annual Profit-Sharing Bonus Program payout to eligible associates 2 months early.
- Because the pandemic caused many associates to cancel their vacation or personal time off (PTO), we temporarily removed the PTO accrual maximum for all associates until July 6, 2020.
- We provided our production associates with food products to take home for themselves and their families.
- Through our partnerships with local and state health organizations, we worked persistently to fulfill our commitment to provide all associates access to a vaccine.

Perdue Farms



Mentoring Young Farmers to Support Their Development and Long-term Success

As part of Perdue Farms' desire to be the Farmer's Choice, Perdue Farms will launch a young farmer development group in recognition of their distinct needs.

In consultation with young farmers, Perdue Farms will explore their priorities for mentoring, information and engagement, and establish a program to support their development and long-term success.

Perdue Farms

Pilgrim's

Investing In the Futures of Team Members, Their Families and Communities

Throughout the global pandemic, Pilgrim's team members and communities have looked to Pilgrim's for reassurance during the crisis. Toward that end, Pilgrim's has committed to providing \$20 million of meaningful investments in projects that have a lasting impact in our communities for generations to come. Pilgrim's is committed to supporting ongoing learning and professional development.

In March 2021, Pilgrim's launched the Better Futures Program to provide meaningful investments in the futures of team members, their families and communities. The company is building the largest free college tuition program in rural America. The Better Futures Program provides team members and their child dependents the opportunity to pursue their higher education dreams for associate degrees and trade certificates at community and technical colleges tuition-free. "We recognize and be-

lieve in the transformative power of higher education and the opportunities that come from education, coursework, and technical skill training.”

As of July 2021, more than 1,250 team members and dependents have enrolled in community colleges across rural America as part of the program.

Tyson Foods

Providing Frontline Team Members With Job Skills Training and Workforce Certifications

At Tyson Foods, a key way we support our frontline team members is through Upward Academy—an innovative education program we created to help team members develop important life skills. In FY 2020, we increased the number of locations offering free and accessible classes in English as a Second Language (ESL), General Educational Development (GED), citizenship and financial and digital literacy to 59 locations. When the COVID-19 global pandemic disrupted in-person classes, Upward Academy pivoted to offer virtual classes so team members could continue their education.

We also launched Upward Pathways, a new approach to create opportunities for upward mobility to team members who exit Upward Academy or those who are not fully utilizing their skills and experience and looking for a next step. These career pathways leading to advanced training and opportunities are a first for Tyson Foods. The addition of Upward Pathways gives all team members access to a robust and equitable career pathway, strengthening an internal pipeline of skilled team members in an increasingly complex production environment.

Food and Consumer Safety



Americans eat more chicken than any other protein—approximately 160 million servings every day. In addition to being nutritious and affordable, chicken producers spend considerable time and resources to make sure our products are as safe as possible and meeting stringent U.S. Department of Agriculture (USDA) standards.

Our Strong Food Safety Record

The U.S. chicken industry has an excellent food safety record. Our industry’s strong safety record is based, in part, on strict Federal monitoring and inspection.

All chicken produced in the United States is closely monitored and inspected by the USDA’s Food Safety and Inspection Service (FSIS)

The FSIS is the public health agency in the USDA that is responsible for inspection at chicken processing facilities.

Federal inspectors are present at all times during operation in chicken processing plants. In a federally inspected slaughter operation, every bird is inspected, and inspectors have the authority to stop production for food safety violations. The U.S. meat and poultry inspection system complements industry efforts to ensure that the nation’s commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly labeled and packaged. Food safety standards are applied to all chicken products produced in the U.S.

Applying Effective Food Safety Controls



To comply with food safety standards and protect consumers, organizations across the entire broiler value chain implement food safety management controls. Standard operating procedures include quality assurance and food safety training, sanitation protocols, hazard controls, and interventions that are designed to eliminate or reduce foodborne pathogens.

While recalls are rare, our industry has robust trace-back and trace-forward capabilities to ensure that products can be identified, if needed, and promptly removed from the marketplace. Our industry also performs a comprehensive root cause analysis to identify in the issue in the system that resulted in the recall and to prevent future incidents.

Improving Food Safety through Research and Investment in Innovative Technologies

Poultry companies have invested tens of millions of dollars in technology and other scientifically-validated measures to enhance the safety of chicken products. By supporting food safety research and applying the best science, research and technology available, the entire industry is better equipped to break the chain of foodborne illness at every stage of production.



We're working every day to improve:

- Expanded and more sensitive detection technologies for pathogens
- Continued research and focus on on-farm and in-plant interventions to control pathogens
- Expanded use of robotics, imaging systems, sensors, etc.

The Prevalence of Salmonella In Raw Chicken Is at All-Time Lows

According to the most recent data available during this report (August 20, 2021) published by FSIS, over 93% of large and small establishments are meeting and exceeding the FSIS performance standard for Salmonella on whole broiler carcasses.

88% of all broiler establishments are **meeting and exceeding the FSIS performance standard for Salmonella** on chicken parts like wings, breasts and drumsticks.

Why the U.S. chicken industry has such an excellent food and consumer safety record:

Vertical integration - industry has the ability to influence the entire process and implement practices that improve food safety

Strict biosecurity procedures - impacts the rate at which pathogens get introduced to flocks

Focus on controlling pathogens throughout the entire process - from primary breeders supplying breeding stock all the way to packaging and distribution of chicken products

Use of a multi-hurdle approach - from farm to fork

Has an arsenal of interventions at its disposal - water/feed treatment, litter treatments and management, vaccinations, pre- and probiotics, organic acids, etc.



Tyson Foods

Ensuring Food Safety, While Conserving Water

Water conservation is a leading sustainability challenge that Tyson's Food Safety and Quality Assurance (FSQA) team is working to address as part of our management of food safety and quality. USDA regulation prescribes specific conditions under which water can be reused for the same purpose (*i.e.*, chilling or washing). That said, there is some need for technical expertise in developing the parameters for the reuse as we have food safety objectives that must be considered. This is where the FSQA team leads. We work collaboratively with the plant operations, engineering, environmental, and laboratory services to identify the best applications and methods for water reuse while addressing the regulatory requirements for demonstrated reduction in microbiological, physical, and chemical concerns.



Key Role Consumers Play In Ensuring Food Safety

We all play an important role in ensuring food safety for our families. Here are some important steps you can take at home to significantly reduce any risks of foodborne illnesses:

Clean—Wash hands and surfaces often.

Separate—Don't cross-contaminate. Use a separate cutting board for raw chicken. Do not rinse raw poultry in the sink.

Cook—Cook chicken to 165° Fahrenheit.

Chill—Refrigerate promptly.

Instructions for safe handling and cooking are printed on every package of meat and poultry sold in the United States. For additional information on safe handling and cooking practices, visit The Partnership for Food Safety Education's *The Fight BAC!*³ site.³



Chicken Check In: Where You Can Learn More About the Chicken You Serve to Your Family



When the National Chicken Council first introduced Chicken Check In over 5 years ago, it was one of the first resources in the industry to offer a consumer-friendly and transparent look at chicken production in the U.S. Chicken Check In remains a key resource where consumers can learn and see how broiler chickens are raised and get answers to frequently asked questions about all things chicken.

For additional information on how broiler chickens are raised and produced, and the benefits and safety of eating chicken, visit *Chicken Check In*.⁴

Community Support



Our members may feed the nation—and the world—but they are acutely aware of their reliance on local talent and passion in the communities they call home. Our broader ambitions and hopes for this industry are meaningful and possible only to the extent that we are anchored on the best interests of the places and unique cultures where we create our livelihoods.

In this section you will find some poignant examples of the commitments our members make daily to assure we collectively play a visible, positive role in our communities.

Pandemic Giving and Beyond

Throughout the pandemic and 2020, chicken companies all around the country gave back—and continue to give back—to their local communities by making donations to food banks, soup kitchens, local health care facilities, police, and fire stations. Companies are providing free chicken for their employees so they don't have to look for it in the store. Every weekend, you can find a company selling chicken at reduced prices right out of trucks in the local community. In coordination with *Meatingplace News*, we have compiled a snapshot of NCC member community donations in 2020. This does not represent every commitment by every member, but provides a rough estimate of meals—and hope—delivered in a challenging year.



2,540,000+ pounds of protein



132,800,000+ million dollars



981,000+ in grants

³ <https://www.fightbac.org/>.

⁴ <https://www.chickencheck.in/>.

22,000,000+ meals

Mountaire Farms



Giving Back to Local Communities

During COVID, Mountaire Farms was dedicated to helping feed the communities where we do business. When food was disappearing from store shelves as people began panic buying, we stepped up to help—and we were determined to make sure that our local community was fed first.

We partnered with one of our customers, Hocker's Super Store, and brought a truckload of chicken to the parking lot to sell directly from the back of the truck so customers didn't even have to leave their vehicles. It proved so popular our company began partnering with local fire departments and churches who kept a portion of the proceeds as a fundraiser. We held dozens of truckload sales events across multiple states on the East Coast. Additionally, we donated almost a million pounds of chicken to first responders, health care workers, and those in the community who were laid off during the pandemic.

Our Mountaire Cares program works with numerous nonprofits and community groups to benefit the community. Our quarterly service projects involve making a big impact through volunteer efforts with groups like the Boys and Girls Club and Habitat for Humanity. Our signature event—Thanksgiving for Thousands—prepares a complete meal in a box and we've fed more than a million people in

the 26 years we've been organizing this event. We've expanded to Christmas and Easter, too. Every month, our food pantry program delivers free chicken to more than 40 organizations that rely on our chicken to feed people in need.

Elanco Animal Health

A Foundation That Feeds

While Elanco has long committed to caring for the health and well-being of its employees, customers, animals and the communities in which they operate, 2020 brought about heightened challenges. In the U.S., the Elanco Foundation awarded grants to several food banks to purchase 900,000 pounds of food that provided nearly 750,000 meals for hungry families. Additionally, a grant from the Foundation to the European Food Bank Federation helped address [heightened] EU food security needs by funding the installation of cold and frozen storage rooms at three food banks in the Czech Republic and one in Greece, and the purchase of two refrigerated delivery trucks, one in Estonia and one in Lithuania.

Established in 2019 by Elanco Animal Health, the Elanco Foundation amplifies the company's philanthropic impact by improving the well-being of people and animals around the world. The Foundation is committed to advancing sustainable growth by making strategic investments in programs focused on promoting food security and the human-animal bond.



Established in 2019 by Elanco Animal Health, The Elanco Foundation is a private, corporate foundation that amplifies Elanco's philanthropic impact by improving the well-being of people and animals around the world.

The Foundation is committed to advancing sustainable growth in its focus areas of human-animal bond, food security and the environment.

Its ability to pivot in 2020 with a strong focus on food security proves the Foundation's flexibility and resilience will be able to help others for years to come.

Perdue Farms

Delivering Hope to Our Neighbors® Amid the Pandemic

As a food company, we are uniquely positioned to help thousands of Americans experiencing food insecurity amid the pandemic through our "Delivering Hope To Our Neighbors®" initiative.

Since 2000, Perdue Farms has partnered with Feeding America® and its network of food banks to help neighbors in our communities who are struggling with food insecurity. During our Fiscal Year 2020, we delivered more than 86 million pounds of protein to regional food banks serving our communities—the equivalent of 71 million meals. Perdue Farms was one of the first meat companies to implement a formal program for ongoing donations of perishable protein products, creating a model for other companies to follow.

Since March 2020, Perdue delivered more than 4 million pounds of protein to support food bank pandemic-relief efforts in our communities and beyond, and in support of frontline healthcare workers, first responders, and community-based hunger-relief programs.



Throughout the pandemic, Perdue Farms provided support to its neighbors in numerous ways.

One of the co-founders at West Annapolis Pop Up Pantry, Diana Love, a recipient of 33,000 Perdue Farms protein meals in 2020 states perfectly the reason our food bank work is so important: “Hungry bellies can’t fight illness, foster children’s growth or contribute to productive lives. This donation helps our families do all of these things.”

Wayne Farms

One Nurse, Many Families, Amazing Impact

Dobson is a small community in the foothills of the Blue Ridge Mountains and home to a Wayne Farms processing plant. When COVID-19 had a ripple effect, both professionally and personally for Wayne Farms team members, Candace Wilmoth became her own pebble in a pond to create rings of influence, positivity, and to meet the moment with creative thinking and action.

As a nurse at the facility and accustomed to providing on-site medical care for any number of needs on a given day, Candace knew that unprecedented times called for unprecedented measures.



Caring doesn't start and stop at the front door. It's something I've always been drawn to, and whether it's at the plant or in our community, I can't help but extend a hand when I see a need. I'm just one person but each person has the ability to make a big difference if they want to.

CANDACE WILMOTH, Nurse at Wayne Farms

Internally, along with a group of team members who made-up a “COVID-19 Vaccine Task Force,” Candace leveraged county relationships and collaborated to hold vaccination events, and oversaw the coordination of transportation and logistics to make getting vaccinated easier, for those who wanted it.



Outside, in her community, Candace saw area families struggling with new distance learning requirements. Many did not have access to the technology or supplies they needed. In response, Candace organized fundraisers and collection drives for computers, notebooks, pens, earbuds, and other school supplies needed for online learning. As a result of her leadership, Wayne Farms’ Dobson facility donated \$10,000 to the Surry County School system. All her efforts made a significant impact for her Dobson team members and area families.

Candace Wilmoth is just one example among many who take to heart the company’s philosophy of “Amazing Starts with Me.”

Just one idea, one person, one step forward can lead to bigger and better ideas for our companies and communities.

Candace’s leadership is a positive example of how the chicken industry improves the lives of many, each day.

Leadership Profiles

House of Raeford Farms

DAVE WITTER, *Manager, Corporate Communications & Sustainability*



I have always been passionate about outreach to those in our communities needing assistance.

Through my work with our nonprofit organization House of Raeford Farms FLOCK, I have been able to contribute to the company's continuing efforts in food security and youth development especially.

Driven by compassion for others, FLOCK walks alongside folks who are already doing great work in their communities and supports them in their mission. We believe companies in our industry

that do well should also do good.

Wayne Farms

CANDACE WILMOTH, *Nurse*



During a time when so many could have just given up, I witnessed quite the opposite.

Through my personal experiences at Wayne Farms in Dobson, North Carolina, I have seen people really show up when they did not have to. For example, community chicken sales, fundraisers for school supplies, canned food drives, and just being present to ensure our world of poultry kept turning during a pandemic.

Witnessing that unity and teamwork for the greater good is life-changing, honestly. It was an honor to be a part of it all. It made

us all stronger.

Pilgrim's

BRIAN PAULSEN, *Head of Environment*



Our facility environmental teams work to be active stewards in the local community environment efforts and wildlife management. In 2020, we helped manage local tree planting events with 19 elementary schools, planting more than 500 trees. It was great to see the younger generation's excitement about environmental stewardship.

Aviagen North America

SARA REICHELT, *Director of Animal Welfare and Sustainability*



We regularly engage in local environmental outreach programs and recently teamed up with a local high school in Elkmont, Alabama, for an outdoor clean-up to help the school prepare to grow vegetables, while giving students a space to be proud of. No sustainability action is too small to make a difference.

Zoetis

JEFF SIZELOVE, *Senior Vice President, U.S. Poultry*



This year, Zoetis announced long-term sustainability goals as our Driven to Care initiative. While sustainability has always been a part of our business, Driven to Care guides how we integrate sustainability in all aspects of our strategic business planning and resource allocation. It focuses on three strategic areas:

1. *Communities* (Care and Collaboration)
2. *Animals* (Innovation in Animal Health)
3. *Planet* (The Drive to Protect Our Planet)

Under each of these areas, we will build upon our experiences in supporting communities when disasters strike; increase veterinary care for animals in emerging markets; provide innovative solutions that assist productive and sustainable farms; combat diseases that pose the biggest risks to animals and humans; and minimize our operations' impact on the planet, including rethinking our packaging to reduce its environmental footprint.

By supporting and partnering with our customers, colleagues, communities and the people who care for animals, we achieve more by working together toward our common sustainability goals.

Food Security

We recognize that food is a basic human need and fundamental right. Everybody needs, and deserves, reliable access to sufficient safe, affordable, and nutrient-dense food. This is food security. Unfortunately, food security is a serious challenge for many people, both in the U.S. and around the world.

As chicken producers, we play an important role: supplying the world with safe and nutritious food. Over the past decade, we have expanded chicken production dramatically to meet growing demand. We now produce 21% more chicken by weight than we did 10 years ago.



Our chicken is not only feeding Americans, but people all over the world. **In 2020, Broiler exports totaled 7.4 billion pounds.**

Providing Americans and People Around the World with Affordable, Nutritious Protein

According to the 2020–2025 Dietary Guidelines for Americans, chicken is a lean protein food that can help people across all life stages.

- Provides vitamins and minerals involved in brain function
- Builds muscle
- Promotes heart health
- Strengthens bones
- Aids in weight loss

Continuing Our Efforts to Enhance Food Security

Our industry is positioned to help enhance food security. CEO Jan Henriksen of global poultry breeding company, Aviagen, says it well:

Our challenge [as a society] will be to feed the world's expanding population with a reliable and quality source of nutrition, while reducing the effects of production. One promising source lies with poultry.

We are continuously looking for ways to improve the world's food systems—through collaborations and support for our members—to help ensure that everyone has reliable access to the food they need and deserve.

The pandemic shed a harsh light on the ongoing issue of food insecurity. For many Americans, the pandemic forced thousands of people to seek assistance with putting a meal on the table for the first time. As a food company, Perdue Farms was uniquely positioned to help.

Applying Biosecurity Measures to Safeguard Health

One way that our industry seeks to enhance food security is by implementing what are called “biosecurity measures.” Biosecurity measures are things we do, as part of chicken production and care, to reduce the risk of introduction and spread of diseases. These activities and innovations go hand in hand with veterinary care to keep our birds healthy while also reducing the need for antibiotics.

Zoetis

JEANETTE FERRAN ASTORGA, *Head of Sustainability and President of the Zoetis Foundation of HR, Safety and Operational Excellence*



As Head of Sustainability at Zoetis and President of the Zoetis Foundation, I spearhead our commitments to communities, animals, and the planet, which we recently formalized through Driven to Care, our long-term sustainability initiative.

We believe that healthier animals make a healthier world, and our sustainability aspirations build on our purpose to nurture the world and humankind by advancing care for animals.

We recently announced a \$35 million commitment through our newly-formed Zoetis Foundation, which will focus its grantmaking on strategic priority areas to enable thriving professions and livelihoods for veterinarians and farmers.

As the leading animal health company, Zoetis is uniquely positioned to drive a healthier, more sustainable future for animals, people, and the planet. For example, our African Livestock Productivity and Health Advancement (A.L.P.H.A.) initiative is helping us achieve one of our aspirations to grow access to veterinary care in emerging markets.

Through innovative solutions, diagnostics and education, Zoetis is making an impact not only for smallholder farms and veterinarians, but for entire communities.

In Africa, we've committed to treating 200 million chickens with positive implications on smallholder livelihoods, food security and the environment by 2025. In the 4 years since A.L.P.H.A.'s inception, we have administered 1.7 billion doses of vaccines and medicines, established ten serology labs, and reached hundreds of thousands of farmers, veterinarians and para-veterinarians through training programs.

True leadership in sustainability requires innovation. One example is our collaboration with Colorado State University, where we have established the Zoetis Incubator Research Lab to explore the livestock immune system and target new immunotherapies—paving the way for new alternatives to antibiotics in food-producing animals, as a way to combat diseases that pose the biggest risks to animals and humans. The initial focus is biotherapeutics for cattle, which could yield broader implications for pigs and poultry.

We're also committed to helping our customers achieve their sustainability goals with healthier, more productive chickens. As an example, *in ovo* vaccination with our Embrex® Inovoject® and Embrex® Inovoject® NXT® biodevices helps provide effective immunization results and supports better bird health and welfare, as well as increasing hatchery efficiency.



Teaching Others to Produce Chickens

Knowledge of best practices also supports food security. With decades of experience and expertise, the U.S. chicken industry is the foremost expert in chicken production.

We know how to produce chickens sustainably and safely. And, while we export our U.S.-produced chicken to people all over the world, we also go to other countries to teach local farmers to better care for their own birds.

By doing so, we empower these farmers to improve food security for themselves, their families and their communities.

Cobb Vantress

LEASEA BUTLER, *Director of Business Development*



I've always had a passion for caring for animals, which came from a deep-rooted culture in my family. Although my parents worked in plumbing, it was the family farm that had my heart. I didn't know then that bottle-feeding calves and butchering chickens on the farm would lead me to a life serving others.

Farm life was not easy, but I loved it, and I would learn much later in life a word to describe my passion for agriculture. I didn't know after high school where I was heading, but I knew I sought knowledge of animals. So, straight off the farm to school I went to study poultry science at the university. I learned so much through school, but my 20+ years at Cobb Vantress have given me the opportunity to fill my "life book" with not only knowledge about chickens, but knowledge of cultures, people, differences, and how agriculture and poultry intertwine to bring us all together.

Recently, Cobb has allowed me the opportunity to take my book of knowledge to African communities to teach others about sustainable food production and agriculture, leading me back to my roots.

Specifically, 2 years ago, I had the opportunity to volunteer in Mozambique. During a project focused on global sustainability and agriculture development in rural East Africa, I taught farmers how to meet the nutritional, health, and husbandry needs of chickens. This in turn allowed the farmers to care for the birds to provide their families with nutritious protein from locally grown chicken meat or eggs. Business skills were also taught to the farmers to encourage best management practices and economic practices.

Farmers not only use the poultry to provide for their local families, but also sell the birds or eggs for a profit. When a chicken is properly cared for, they produce more eggs and meat, making them the most economic protein source for African small holder farmers and their families. I've learned from so many of the women and men that I've worked with in Africa. I've learned how much poultry has been a part of their culture as it is in our company culture.

My most cherished memory of my volunteer effort in Africa was teaching a little girl named Agape and her family how to care for their chickens. Agape, full of life, was so excited to hold a baby chicken that would ultimately provide food security for her family. The image of her smile and little hands holding that day-old layer chicken and how I was able to partner with her family's future will never escape my memory.

I was led to share my book of knowledge with communities in Africa to show them how to raise and care for chickens, to empower them to have a sustainable source of protein and to provide income for their families. Back home in North America, I continue to share that same book in my daily life to help people care for poultry and to provide for their families on commercial broiler and breeder farms. Agape, abounding love of a little girl to care for animals to care for her family. Agape, to give to others the precious gift of knowledge.

What's Next?

We are proud of our industry's sustainability efforts, and proud to have shared this first U.S. broiler chicken industry sustainability report with you.



This is an important step in our collective journey as an industry. Our efforts will continue, as they must, to support our planet and society for the decades to come.

Looking ahead, we are focused on sustainable development and the critical role of food systems that include our chicken industry. We recognize the importance of continuing progress on the SDGs through the work of our members and through partnerships with other organizations to leverage our collective strengths.

We look forward to the US-RSPE's release of the first-ever multi-stakeholder reporting framework for the full U.S. supply chains for chicken, turkey, and eggs. The new framework will become a valuable tool to guide our members on their sustainability strategies and reporting. We will encourage members to use the framework to measure their sustainability impacts and make meaningful disclosures—whether they are beginning their sustainability journeys or already have mature programs.

Opportunities revealed by the described *Broiler Production System Life Cycle Assessment: 2020 Update* also set the groundwork for next steps for the chicken industry. Based on the data, we know that all five key sustainability intensity metrics improved significantly in the past de-

cade. We also know that additional improvements are possible going forward.

The research revealed that our continued areas of greatest impact and improvement will come from factors affecting feed consumption and feed conversion ratio. Therefore, further innovations in genetics, feed additives and supplements should be seen as part of our next sustainability frontier.

The future of our planet, people and communities depends on us doing our part, and we are committed.

Also based on the 2020 LCA, we learned that external factors associated with increasing crop production, improving fuel efficiency, and increasing adoption of renewable energy sources should become an integral part of our extended purview.

Finally, we are mindful of regional differences that affect the opportunities for achieving sustainability progress. Knowing that one-size-does-not-fit-all regarding

geography, we will consider regional differences when we advance new solutions. This is true for NCC as well as for our members.

Individual NCC members might use learnings from the 2020 LCA as the starting point for their own footprint assessments, to help them identify organization-specific opportunities for continuous improvement, as will US-RSPE's sustainability framework.

Our chicken industry will continue to innovate as responsible stewards to advance sustainability while feeding the world.

EXHIBIT 2: NCC COMMENTS TO DOCKET NO. AMS-FTPP-21-0044 TRANSPARENCY IN POULTRY GROWER CONTRACTING AND TOURNAMENTS (AUG. 23, 2022)

August 23, 2022

Submitted electronically via regulations.gov

BRUCE SUMMERS,
Administrator,
Agricultural Marketing Service,
United States Department of Agriculture
Docket Clerk,
Agricultural Marketing Service,
U.S. Department of Agriculture,
Washington, DC

Re: Docket No. AMS-FTPP-21-0044, Transparency in Poultry Grower Contracting and Tournaments

Dear Mr. Summers:

The National Chicken Council (NCC) appreciates the opportunity to provide comments on the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) proposed rule "Transparency in Poultry Grower Contracting and Tournaments" (Proposed Rule).¹ NCC is the national, nonprofit 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 would be directly affected by the Proposed Rule.

As explained in more detail in these comments, NCC is deeply concerned that the Proposed Rule would have a devastating financial impact on the U.S. chicken industry by raising costs and administrative burdens, contributing to increased food prices for consumers, and ultimately destabilizing a successful compensation system. This would lead to negative ancillary impacts on other related sectors through less efficient use of inputs and resources used for producing poultry such as feed and energy. NCC opposes the Proposed Rule. We urge AMS to withdraw it and refrain from further steps that would undermine a successful compensation system. If AMS were to nonetheless proceed with this rulemaking, we have identified several issues for further consideration.

These comments begin with an Executive Summary (Part I), followed by a brief description of the benefits of the poultry grower compensation system (Part II), fundamental concerns with the Proposed Rule (Parts III and IV), and comments on specific aspects of the Proposed Rule (Part V).

I. Executive Summary

NCC opposes the Proposed Rule and urges AMS to withdraw it in its entirety. The current poultry grower compensation system has long worked well to fairly and appropriately reward high-performing growers and drive efficient use of resources. The proposal would undermine the efficiency and global competitiveness of the U.S. broiler industry by imposing needless costs and rigid mandates with no quantifiable benefit but with clear negative impacts. This will ultimately inject costs and inefficiencies into the supply chain at a time when inflation and access to affordable food are key concerns to the American public. Further, the proposal contradicts the clear intent of Congress, is well beyond AMS's mandate under the Packers and Stockyards Act (PSA), and is arbitrary and capricious under the Administrative Procedure Act (APA).

If AMS moves forward with this rulemaking despite these concerns, NCC has identified several issues requiring further consideration, including the following:

¹ 87 Fed. Reg. 34980 (June 8, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-06-08/pdf/2022-11997.pdf>.

- **Assess the true cost of the Proposed Rule:** AMS’s cost assessment overlooks numerous key costs industry would shoulder to comply with the Proposed Rule and significantly underestimates the actual costs of the proposal, including the Proposed Rule’s potential effects on inflation.
- **Address all PSA amendments in a single rulemaking:** AMS has positioned the Proposed Rule as part of a broader set of planned changes to AMS’s PSA regulation. AMS should address all amendments to PSA regulations in a single rulemaking and avoid a piecemeal approach that imposes shifting requirements and hidden costs over several years.
- **Limit scope of disclosures:** AMS should limit the scope of the proposed required disclosures to only information that would actually affect grower compensation expectations and omit all information that is publicly available or unrelated to compensation. Several of the proposed disclosures are unhelpful and introduce unnecessary complexity into an already highly regulated process.
- **Omit the proposed governance framework and certification:** AMS should omit the proposed governance framework and certification in its entirety as this proposal is an incredibly costly measure that does not provide useful information and does not address a real concern.
- **Eliminate the required disclosure of forward-looking projections:** All forward-looking projections should be omitted from a final rule, as they by definition cannot be accurate and risk causing significant confusion.
- **Eliminate the requirement that minimum annual placements and minimum stocking densities be included in contracts:** The proposal’s requirement that contracts specify minimum annual placements and minimum stocking densities goes well beyond mere disclosure, imposes terms on private contracts, and would wrongfully impede the ability to adjust to market dynamics.

In addition to these points, we have identified several other aspects of the Proposed Rule that are vague, unnecessary, unworkable, or would otherwise require clarification.

II. The Current Poultry Grower Contracting System Is a Well-Designed, Efficient Structure That Benefits Growers, Dealers, and Consumers

NCC supports the current poultry grower compensation system because it rewards family farmers for their hard work efficiently raising high-quality birds. The current system’s fair, honest contracts provide a target pay that high-performing growers can supplement with the efficient use of resources necessary to produce poultry. This system promotes superior results that lower the cost of raising chickens for the benefit of growers, live poultry dealers (“dealers”), and consumers.

The system also efficiently allocates economic risk to the parties best prepared to burden it—dealers supply growers with broiler chickens, feed, veterinary care, technical advice, and other resources, alleviating most of the economic risk from their contract growers as compared to independent growers. Meanwhile, contract growers provide high-quality, day-to-day care, land, and housing for their birds. This mutually beneficial partnership supports the economic viability and independence of family farms by averting risk and promoting stable and predictable income.

Indeed, a March 2022 study conducted by Dr. Tom Elam (the “Elam Study,” attached as *Appendix A*) found widespread benefits and support for this model as mutually beneficial, successful, and profitable.² USDA’s own data shows that over the last decade, poultry growers on average earned more than the average farm income.³ Average grower payments per square foot and payments per pound have increased steadily over the past thirty years, and raising broilers generated more than \$3.6 billion in payments to growers in 2020 (in 2012 dollars), income that sustains rural communities and gets reinvested back into American agriculture.⁴ Revealingly, the Elam Study shows that even with the onslaught of the COVID–19 pandemic, lockdowns, and unprecedented economic disruption, growers earned more in payments from dealers than in any prior year, reflecting the value of the current grower compensation model. Had growers owned their own birds, they would have

²T. Elam, *Live Chicken Production Trends*, FarmEcon, LLC (Mar. 2022), <https://www.nationalchickencouncil.org/wp-content/uploads/2022/03/Live-Chicken-Production-FARM-ECON-LLC-2022-revision-FINAL.pdf> [hereinafter “Elam Study”].

³*Id.* at 10 (citing USDA, Agricultural Resource Management Survey, <https://my.data.ers.usda.gov/arms/tailored-reports>).

⁴*Id.* at 7. Notably, this figure encompasses payments from integrators to growers. It does not encompass other payments such as COVID–19 relief payments.

faceted devastating market conditions and met financial ruin. Instead, under the current system, they thrived.

The American poultry industry is the most competitive in the world in significant part because the poultry grower compensation system encourages innovation and investment in the best equipment and practices. NCC is proud to represent an industry that consistently and continuously produces affordable protein, even in times of soaring across-the-board inflation and economic distress that increase prices for consumers.

The competitive nature of this industry and existing requirements incentivize and ensure poultry processors operate fairly and justly. Most growers are in a position to choose between partnering with two or more processors and can readily cut ties with a bad business partner. Over 50% of growers have been with their current dealer for 10 years or more, a statistic unchanged from 2015, with an additional 20% having been with their current dealer for over 5 years.⁵ Given that the majority of poultry growing contracts during the study were for 5 years or less, and ⅓ were flock-to-flock arrangements, these statistics show that growers find their relationships with dealers beneficial and willingly continue doing business after their initial contracts end. Moreover, chicken processing plants are expensive and only provide sufficient return on investment if they operate at full capacity. Processors that gain a reputation as bad business partners, including by attempts to manipulate a grower's performance or otherwise drive away growers, would quickly see their plants under-supplied and their grower pool taken by competitors. Notably, AMS cites no evidence of actual unfair dealings to support this proposal.

III. AMS's Proposal Exceeds Its Statutory Authority, Contradicts Congressional Direction, and Is Arbitrary and Capricious

A. The Proposed Rule exceeds AMS's statutory authority under the PSA

AMS grounds the Proposed Rule in Section 202(a) of the PSA, which makes it a violation for any live poultry dealer to “[e]ngage in or use any unfair, unjustly discriminatory, or deceptive practice or device.”⁶ However, AMS fundamentally fails to identify how plainly written poultry growing arrangements are unfair, unjustly discriminatory, or deceptive. Indeed, they are not.

Instead, AMS attempts to justify the Proposed Rule by arguing that poultry growing arrangements are “incomplete contracts,” by pointing to information asymmetries, and by revisiting well-worn allusions to vaguely described grievances made by unidentified growers. As explained below, we question the sufficiency of these statements to support the rulemaking record to begin with. Even if these statements were true, however, they do not establish that Section 202(a) of the PSA authorizes AMS to mandate onerous disclosures as part of the contracting process. First, to the extent that AMS is concerned that some conditions affecting compensation may not be encompassed in the contract, that is common in many entirely lawful business arrangements. A supply agreement might not have minimum volume requirements, an author's publisher agreement does not specify how many books will be sold, an accountant's engagement letter might not specify how many hours of work the client will request, and a farmer renting a stall at a farmers['] market has no guaranteed buyers. None of those situations are unfair or deceptive practices, and indeed, the Federal Trade Commission has not prohibited them despite also having authority to address deceptive practices in other sectors. Moreover, unlike all of these examples, a dealer has an economic interest in keeping growers' farms in steady operation, as dealers also invest costs into the dealer-grower relationship and have every incentive to keep their growers in production.

Second, all markets have information asymmetry; perfect information symmetry exists only in economics textbooks. The fact that dealers may possess information about their businesses not known to growers and that growers may possess information not known to dealers does not in any way mean that dealings between the parties are unfair or involve deceptive practices. Tellingly, most, or all, of AMS's proposed disclosures in no way affect how a grower's settlement will actually be calculated. Settlement calculations are defined through contracts, and growers are provided at settlement all the information necessary to determine how the payment was determined. Growers also have ample opportunity to understand the market before entering into an agreement, including by consulting lenders, financial advisors, agriculture extension offices, and their community members. Further, other rem-

⁵*Id.* at 3.

⁶7 U.S.C. § 192(a). AMS also cites PSA Section 410(a)'s full-payment provisions, but nowhere does AMS allege that dealers do not pay growers as called for under their contracts, nor would the Proposed Rule do anything to address actual payments; the stated aim of the Proposed Rule is to provide more information.

edies are available in the exceedingly unlikely event that a dealer would actually fraudulently induce a grower to sign a contract. AMS has not established that the mere existence of a potential information asymmetry requires the proposed disclosures to remedy unfair or deceptive practices. Section 202(a) requires that parties not engage in unfair or deceptive practices; it does not require that all parties have the exact same information.

Finally, to support its position that widespread Section 202(a) violations would occur without the proposed disclosures, AMS provides only vague references to complaints by growers. AMS provides no details about these purported complaints, including what specifically they alleged happened, when they were lodged, whether they were substantiated, or even how many AMS has received. The long history of rulemaking on this topic has been peppered with allusions to thinly described complaints, but never has AMS provided any real detail. Even more tellingly, no court has ruled that the current grower compensation system violates Section 202(a), nor has AMS taken enforcement action on this basis despite decades of use. In short, AMS has failed to establish that the Proposed Rule is necessary to prevent PSA Section 202(a) violations.

B. The Proposed Rule Is Contrary to Congressional Purpose

More than a decade of clear Congressional direction reinforces that AMS lacks authority under the PSA to conduct this rulemaking. USDA has a long history of overseeing the PSA through established regulations and within the guardrails established by extensive Federal appellate case law about the scope of PSA Section 202. The PSA has been law for more than 100 years, and Congress has amended it as needed over the years when it determined additional authorities or requirements were needed.

Congress also addresses PSA issues periodically through farm bills and the appropriations process. Congress most recently addressed PSA issues through the 2008 Farm Bill and subsequent appropriations bills. In the 2008 Farm Bill, Congress directed USDA to identify the criteria that would be used to evaluate whether four different types of conduct violated the PSA.⁷ In 2008, the broiler industry was using more or less the same style of grower compensation system as is being used today. Notably, although Congress directed USDA to address several topics, the 2008 Farm Bill did not direct USDA to take any actions related to poultry grower compensation or the so-called tournament system. When USDA responded with a wide-ranging proposed rule that addressed poultry grower ranking systems, among other topics, in great detail, Congress used its appropriations powers to prevent USDA from finalizing and implementing the rulemaking for several years.⁸ When the appropriations restriction eventually lapsed, USDA never further pursued rulemaking to address poultry grower compensation.

This history demonstrates exceedingly clear Congressional direction about the nature of topics appropriate for USDA rulemaking under the PSA. Through the 2008 Farm Bill, Congress provided USDA with clear direction to address topics that Congress determined needed additional regulations. Congress was undoubtedly well aware of the types of poultry grower compensation systems being used, as those systems had been in place for many years. Nonetheless, Congress specifically did not direct any action with respect to poultry growing arrangements. This directly reflects Congress's view that the prevailing regulatory framework for poultry growing arrangements be maintained. If that were not direction enough, when USDA attempted nonetheless to change the prevailing regulatory structure, Congress promptly stepped in and used its appropriations authority to halt further rulemaking on poultry grower compensation systems, maintaining that prohibition for years. Moreover, Congress did not intervene when USDA stopped pursuing and eventually withdrew the proposed rule on poultry grower compensation systems.

Taken together, this sequence of events clearly shows how, over more than a decade, Congress expressed its consistent view that the then-existing approach toward poultry grower compensation systems was the desired one and that USDA was overstepping by trying to change the system. Despite the current poultry grower compensation system being in use for decades, no Federal court has held that the system violates Sections 202(a) of the PSA, further reinforcing that the current regulatory approach, not the proposed one, is the one intended by Congress.

⁷H.R. 6124, 110th Cong. § 1106 (2008).

⁸Consolidated and Further Continuing Appropriations Act, 2015, H.R. 83, 113th Cong. § 731 (2014); Consolidated Appropriations Act, 2014, H.R. 3547, 113th Cong. § 744 (2014); Consolidated and Further Continuing Appropriations Act, 2013, H.R. 933, 113th Cong. §§ 742–43 (2013); Consolidated and Further Continuing Appropriations Act, 2012, H.R. 2112, 112th Cong. § 721 (2011).

Given this clear direction from Congress, whether to take any steps to change the current poultry grower compensation system is a major question requiring Congressional direction. As such, AMS may not expand its regulatory framework to change or undermine the currently used system. As recently stated by the Supreme Court in *West Virginia v. EPA*, in certain cases of “economic and political significance,” an agency must demonstrate “clear Congressional authorization” to exercise its powers.⁹ As evidenced by the amount of public attention devoted to chicken industry contracting and attention from the highest levels of USDA and the White House, chicken grower contracting has taken on “political significance.” It is also of great economic significance, as it drives billions of dollars in revenue to growers and forms the foundation for the U.S. broiler industry, benefiting growers, processors, and consumers. Not only does AMS lack the necessary “clear Congressional authorization” to advance rulemaking into this topic, Congress has also already voiced its support for the current system and its objection to USDA efforts to further regulate the existing poultry grower compensation system.

C. The Proposed Rule Is Based on a Flawed Administrative Record and Thus Is Arbitrary and Capricious

The Proposed Rule is based on a flawed administrative record that reflects a fundamental misunderstanding of poultry contracting supported only by unsubstantiated hearsay. This flawed administrative record renders the Proposed Rule arbitrary and capricious under the APA.¹⁰

The Proposed Rule is fundamentally unnecessary for the efficient operation of the chicken raising market. AMS justifies the Proposed Rule as being necessary to address the perceived “gap between expected earnings and the ability to actually achieve those outcomes through reasonable efforts by the grower” by “increas[ing] transparency in all poultry growing contracting.”¹¹ In fact, the chicken grow out market has long operated efficiently without these government-mandated disclosures, and most of the proposed disclosures would not provide any meaningful information about what income a grower might anticipate from a contract that is not already provided due to private market dynamics.

Broiler processors have long used various permutations of competitive grower compensation systems to drive efficiency in production. In many ways, this is no different than any arrangement between a business and a service provider, in which service providers compete with others to provide the highest quality services as efficiently as possible and buyers of those services compete with each other to secure the best providers at favorable prices. This process has resulted in a highly efficient market and is an important driver of the global cost-competitiveness of U.S. chicken meat. Chicken meat has never been more affordable in the U.S. on a real-dollar basis or when viewed against a typical household’s overall buying power, even considering the immense inflationary pressures facing consumers and businesses from all directions. AMS fails to explain why these broadly recognized economic principles do not apply in the poultry growing market. In fact, AMS has previously conceded that the economic literature on the industry supports a finding of no anticompetitive market power effects, which one would expect to see before intervening in a market.¹²

The chicken growing contracting process is highly efficient and is also mutually beneficial for both parties. If it were not, contracts would not be extended through mutual agreement, entrepreneurs would not continue to enter the poultry raising business, and growers would shift away from poultry production to other substitute agricultural land uses. Instead, contracts are regularly renewed (even flock-to-flock arrangements), farmers willingly invest in improving their farming operations, and a thousands-strong waiting list of farmers seeking to enter the chicken raising business or expand their farms to raise even more birds, willingly investing to improve farming operations.¹³ Although NCC understands AMS is aware of at least one study demonstrating growers’ interest in renewing their agreements (the Elam Study discussed elsewhere in these comments), AMS fails to address this in its proposal.

⁹ 142 S. Ct. 2587, 2613–14 (2022).

¹⁰ 5 U.S.C. § 706(2)(A).

¹¹ 87 Fed. Reg. at 34980.

¹² See *Unfair Practices and Undue Preferences in Violation of the Packers and Stockyards Act*, 81 FED. REG. 92711 (Dec. 20, 2016) (noting that in a review of thirty-three studies published since 1990 relevant for assessing the effect of concentration on commodity or food prices in agricultural sectors, a majority of the studies “found no evidence of market power, or found that the efficiency gains from concentration were larger than the market power effects”).

¹³ See Elam Study at 3, 4, 11, 12.

Further, AMS's characterization of growers as being unsophisticated, financially uninformed neophytes who are unable to understand contracts and make informed business decisions does a great disservice to rural America. The history of PSA rule-making over the past twelve years has been rife with vague suggestions and insinuations that growers are in some manner misled or mistreated during the contracting process. But at no point in numerous rulemakings over more than a decade has AMS actually identified specific instances that would constitute a PSA violation or even concretely demonstrated that the perceived harm is real and widespread at a level justifying costly and invasive regulations that will harm industry participants, including growers and consumers. Nor has AMS obtained court rulings that find the vaguely alluded-to conduct violates the PSA. Instead, AMS would base this rule-making on conjecture and vague allusions to unsubstantiated complaints, many of which likely date back to a listening session more than a decade ago.

In fact, chicken growers are savvy small business owners, many of whom have decades of farming experience and are part of multi-generation farming families. They understand the business and enjoy average incomes that exceed that of the typical American farmer.¹⁴ At the same time, chicken growers know they do not have 9 to 5 jobs in air-conditioned offices. They choose to enter and stay in the business because they are committed to farming, and those who value hard work and innovation see their efforts rewarded. They understand how to read their contracts, project income under various scenarios, and maximize their income by raising birds as efficiently as possible.

Moreover, like most businesses in the country, many chicken farmers rely on loans to finance parts of their operations. This market attribute provides additional protection for farmers that displaces AMS's theoretical concerns. The banks that specialize in agricultural lending to chicken growers have an extremely sophisticated understanding of the chicken industry, and they are able to make informed decisions about a farmer's creditworthiness and likely income based on a farmer's experience with the industry and the contents of existing contracts. If a lender does not believe a particular contract would provide adequate income for a chicken grower to meet his or her loan obligations, the lender is unlikely to issue the loan. This aspect of the private market provides an incentive for the dealer to ensure that the chicken grower has the information necessary for the grower and lender to evaluate the contract, as the dealer has an interest in a grower being able to secure necessary financing on favorable terms. Importantly, this happens through efficient market dynamics and in the absence of costly and prescriptive regulations. And just as importantly, it works. For example, the Elam Study found that the deficiency percent and charge-off percent for poultry grower loans amount to merely $\frac{1}{3}$ of the average agricultural loan, based on Small Business Administration loan quality data.¹⁵ The data overwhelmingly show that growers and their lenders are able to effectively and accurately evaluate expected income from poultry growing arrangements without the burdensome and largely uninformative disclosures called for in the Proposed Rule. AMS entirely overlooks the role that lenders play in helping to structure the poultry raising market, despite the fact that agricultural loans are administered by a sister agency, yet again underscoring the arbitrary and capricious nature of this rulemaking and lack of an adequate administrative record.

Under current practices, growers are provided contracts that clearly set forth how their payments are determined. With this information, a grower can review the contract, assess his or her ability to perform as well as or better than his or her competitors, and make an informed decision as to whether to enter the chicken raising business. Other American small business owners make critical business decisions with much less information. Moreover, at settlement, dealers provide the information necessary for growers to understand their payment under the contract, and growers with concerns about payments can raise those concerns directly with the dealer or pursue numerous other avenues for relief.

Importantly, none of the factors identified in the proposed disclosures meaningfully impact grower payments over the length of a typical growing arrangement. Dealers provide growers with inputs from a common supply in an essentially random manner (with the obvious exception of growers supplied with specific types of birds or specific feeds to meet various specifications, which would already be separately addressed). While inputs may naturally vary due to the practical reality that the industry involves live animals, such as slight variations in feed supply or in breeder flock age, any natural discrepancy would naturally dissipate over the life of a typical growing arrangement, and any such variation is statistically insignificant over time. Providing precise inputs while accounting for minor flock-by-flock

¹⁴*Id.* at 10.

¹⁵*Id.* at 11.

variations would rigidly impose extremely complicated systems on dealers that would certainly increase costs on the sector and that would not result in greater overall grower compensation or more efficient results. In fact, a grower would be disappointed to see his or her payment adversely adjusted because of a minor variation in a dealer input, when in reality his or her excellent care and hard work was the actual reason the flock performed well.

Fundamentally, the grower's skill and expertise in managing the birds and deploying the grower's resources drives grower payments under broiler production contracts. The proposed disclosures entirely fail to acknowledge this premise. In contrast, under the current system, a grower's skills and efficiency are reflected in settlement payments. The information covered in the proposed disclosures is ancillary at best and, in many cases, immaterial to grower payments. Requiring complicated disclosures as contemplated in the Proposed Rule will not improve a grower's ability to project income. AMS again glosses over the disconnect between the broad and burdensome disclosures and how settlement payments are actually determined under the parties' agreed-upon terms. There must be a "rational connection" between a regulation and the issue it is trying to address, but the clear disconnect between the disclosures and how payments are actually determined means that standard is not met.¹⁶

Further, the proposed governance and certification framework is entirely unnecessary, does not achieve the Proposed Rule's objectives, is well outside the scope of the basis for the rulemaking, and, as discussed further below, would impose exorbitant compliance costs on the chicken supply chain with no benefit. Even if the disclosures called for under the Proposed Rule helped growers better project their income under contracts, AMS has not identified any compelling reason to suggest the information provided would be inaccurate or would otherwise require the proposed complex auditing and oversight scheme seemingly inspired by public financial reporting for publicly listed companies. Companies have been required to maintain various documents showing compliance with the PSA for decades and have successfully met those requirements without cumbersome and costly auditing and certification functions. There is no evidence that such a function would improve the reliability of disclosed information. However, these functions would be needlessly costly to the detriment of growers, dealers, and consumers. Including this provision is likewise arbitrary and capricious.

Moreover, proposed § 201.100(f)(1)(ii) would apparently have the proposed governance framework apply not only to the proposed disclosures but also to all of PSA compliance. PSA compliance beyond disclosures falls well outside the scope of this rulemaking. If additional compliance is considered at all, it should be addressed in a separate rulemaking appropriately focused on those issues. Many aspects of PSA compliance are not conducive to auditing systems, and nothing indicates that such a system would materially improve PSA compliance. Finally, as written, the proposed governance framework would apparently apply only to live poultry dealers, which would create troubling inconsistencies in how companies marketing different species would have to demonstrate compliance with the PSA.

AMS's rationale for the proposed governance framework suffers an even more egregious and alarming flaw in the record. As justification for the need for the burdensome governance framework, AMS points to "current civil and criminal actions" against various individuals or companies alleging certain antitrust violations, citing to a press release indicating that the Department of Justice had brought charges against certain individuals.¹⁷ It is entirely inappropriate for an agency to point to *ongoing* criminal or civil litigation to justify rulemaking of any kind. The mere filing of a civil complaint or criminal charges in no way indicates the alleged events actually occurred or that the individuals or companies are liable for or guilty of the conduct. Defendants are presumed innocent unless proven guilty, and an agency should never use unproven charges as the basis of a rulemaking or use the rulemaking process to influence public view of a case. Otherwise, there would be nothing stopping the government from bringing charges or filing complaints solely to manufacture an administrative record. Underscoring this point, the Department of Justice has dropped charges against several of the defendants in the case that AMS references as justifying the governance framework. This stated rationale deeply reinforces the arbitrary and capricious nature of the rulemaking.

Lastly, it has come to NCC's attention that officials at USDA or the Department of Justice may have on its own accord contacted growers about submitting comments to this rulemaking, and that it is possible these communications may have had the intent or effect of dissuading growers from submitting comments not in sup-

¹⁶ *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

¹⁷ See 87 Fed. Reg. at 34996.

port of the Proposed Rule. NCC and our members place great weight on all Americans' First Amendment rights to speak their opinions freely, as well as on the freedom of all stakeholders to freely share their views on proposed regulatory action (or to refrain from doing so), to do so anonymously if they so desire, and above all, to do so without coercion or influence by the regulatory agency conducting the rule-making. To the extent USDA or the Department of Justice has contacted growers or any other stakeholders in a manner that presents even the possibility of influencing the nature of comments that may be received, such action would irreparably poison the administrative record, and AMS would need to withdraw the rulemaking in its entirety.

For all these reasons, as well as the specific infirmities discussed further below with respect to specific proposed provisions, the proposal is arbitrary and capricious and should be withdrawn.

IV. AMS Has Significantly Underestimated the Costs of Complying with This Regulation

AMS has significantly underestimated the costs of the Proposed Rule and failed to consider other adverse consequences of these regulations, including the risk of increased frivolous litigation, industry-wide efficiency losses, costs to farmers and consumers, and the effects on inflation.

AMS predicts the 10 year aggregate combined costs to dealers and poultry growers under the Proposed Rule to be \$20,492,160. AMS estimates that \$9,039,442 of these costs will be carried by dealers and that an even greater amount—\$11,452,718—will fall on poultry growers. These costs alone would affect the bottom line of growers and dealers with no clear benefit. Moreover, these exorbitant costs will burden food supply chains across the country in a time when severe inflation has raised the cost of food to record levels. Further, we fail to see how AMS can credibly claim this rule benefits growers when more of its financial burden is placed on the shoulders of those who it purports to protect and when AMS all but concedes the Proposed Rule will not actually increase overall grower pay.

AMS has underestimated the hourly rates, number of people involved, and time required of executives, compliance officers, regulatory consultants, attorneys, and other services required to implement the Proposed Rule. For example, to implement the proposed governance framework, dealers would need to procure new data management systems and potentially custom software and substantially expand their compliance departments to collect, maintain, organize, and verify the information. Establishing compliance programs requires highly compensated skilled professionals, and smaller dealers may suffer the most due to their lack of scale to better absorb these costs. Because the Proposed Rule would require contracts be amended directly, dealers would incur extensive costs studying and evaluating necessary modifications, renegotiating thousands of contracts, and implementing each individual change. Similarly, growers would incur legal and advisory costs as they work to understand any changes and decide whether to accept them. The proposed disclosures would almost certainly generate frivolous litigation, and the proposed requirement to disclose prior and ongoing litigation could deter settlements, further increasing legal fees for growers and dealers as cases that would have otherwise settled drag out and cases that should never have been filed have to be litigated. AMS does not adequately consider any of these costs in the Proposed Rule.

Moreover, AMS entirely fails to consider the negative effects of the proposed disclosures on growers, especially high-performing growers. AMS apparently contemplates that dealers might adjust payment based on various factors. AMS's presumption is entirely misplaced. If a dealer were to increase pay for lower-performing growers, that money would have to come from somewhere, and it might have to be offset by decreasing the income of high-performing growers who are accustomed to being rewarded for their hard work. This would lead to payment compression and fewer incentives and rewards for the best performers. It would also harm the highest-performing growers, especially those with excellent track records who have invested in their farming operations based on an understanding that their high performance will continually be rewarded.

Removing incentives for high performance would trigger a vicious cycle of efficiency and productivity losses as growers who are no longer rewarded for high performance have fewer incentives to perform highly. This would compromise the overall global competitiveness and the resources of the U.S. chicken industry, shrinking the pool of revenue available to growers and driving up costs while also further squandering our already limited resources during a period of already historic inflation. Dismantling the current structure, which rewards higher performance, will disincentivize growers from making their operations more efficient and risks raising the cost of production, ultimately harming consumers, integrators, and growers

alike. The American chicken industry is extremely competitive worldwide, due in large part to efficiencies and innovation driven by the current system. Under the proposal, AMS risks increasing costs, reducing efficiencies, and stifling innovation, which could make the American chicken industry less competitive against growing international competition to the detriment of American agriculture as a whole.

Finally, AMS fails to consider the negative consequences of injecting needless and extensive production costs into the broiler supply chain in the midst of the highest inflationary period in forty years. Chicken has earned its place on the table through a relentless focus on efficiency at all steps of production, making it America's number one, and most affordable, animal protein. However, supply chain disruptions, loose fiscal and monetary policy, labor shortages, rising feed costs, lingering effects of the coronavirus pandemic, and geopolitical events have all placed immense cost pressures on the supply chain. AMS's reckless injection of additional costs into the supply chain will hurt everyone who touches chicken-growers, dealers, and consumers. As an affordable and nutritious food, chicken is an especially important protein source for food insecure individuals and those who participate in USDA's nutrition assistance programs. AMS has failed to consider the negative consequences to society of increased production costs and especially the consequences to the nation's most vulnerable individuals who may find themselves able to afford less chicken. AMS's cost estimates are likely low by orders of magnitude.

Worse, AMS proposes to impose these costs without identifying any real quantifiable benefit. AMS can only point to a highly theoretical explanation that "a risk averse producer will benefit economically from a reduction in revenue risk."¹⁸ In short, AMS concedes that growers will not actually earn more income overall under the proposal and alleges only that the costs of the rule may make it somewhat easier for growers to predict how much income they might earn. AMS tries to assign a theoretical dollar value to this benefit by hypothesizing the value of reduced uncertainty around revenue for individuals with theoretical amounts of risk aversion, conjuring a wide range of potential 1 year and 10 year discounted values based on possible variations in net revenue. These figures range from about \$1.5 million at the low end of the 1 year range to \$305 million at the high end of the discounted 10 year range. In other words, AMS believes that growers might benefit from the assumption that they would have a better idea of how much money a contract might bring and further attempts to assign an economic value to having that certainty. Critically, AMS does not propose that a grower would actually make more money, just that the grower might have a better idea of how much money he or she would make (in fact, the added costs would likely decrease overall grower pay in the aggregate). This attempt to quantify benefits strains credulity and belies the lack of any real benefit to justify the costs of this proposal. Put differently, under one scenario, AMS's analysis says it is worth \$305 million to growers over 10 years to be able to better predict how much income they will make under their contracts (again, not to actually make more money under the contracts, just to know with greater certainty how much they will make). This would mean that rational growers collectively should be willing to pay up to \$305 million dollars right now to receive the income clarity the Proposed Rule would supposedly bring. Of course, no grower would actually make such an offer, reinforcing that AMS's attempt to quantify the benefits constitutes hand-waving at best.

At bottom, AMS is proposing to inject tens of millions of dollars of compliance costs into the chicken supply chain with no actual benefits. At a minimum, AMS must conduct a properly comprehensive cost-benefit analysis that better reflects the exorbitant costs of this Proposed Rule and compares those against any real, quantifiable benefits. AMS should withdraw the proposal entirely.

V. Comments on Proposed Regulations

Although NCC strongly urges AMS to withdraw the Proposed Rule for the reasons explained above, if AMS moves forward with the rulemaking, we urge it to revise the proposal to reduce the costs imposed on stakeholders and better focus the rule on AMS's goal of providing useful, essential information to growers. In particular, we highlight the following considerations.

A. AMS Should Limit the Scope of the Proposed Regulations and Ensure the Timing of These Disclosures Reflects Business Realities

1. Scope of Information Subject to Disclosure

AMS states the goal of the Proposed Rule is to provide growers with information that USDA believes will help growers anticipate income under poultry grower con-

¹⁸ 87 Fed. Reg. at 35008.

tracts. To achieve its goal, AMS should focus only on those disclosures that might inform grower incomes. To this end, NCC recommends AMS omit from the required disclosures the following items that are irrelevant for determining how much income a grower may earn: dealer's bankruptcy history, litigation history, general rights and obligations under the PSA, payment information for different regions, and breeder flock information.

The scope of these data would result in extremely lengthy, burdensome disclosures, especially for large dealers, that will not be helpful for growers and will only introduce confusion and complexity into contracting. Omitting the requirements listed above would reduce the costs of the rule and the administrative burden on dealers. Similarly, its omission would help reduce confusion over the disclosures provided and focus growers' attention on information that might be indicative of income.

Likewise, AMS should not place on dealers the administrative burden of collecting publicly available information. For information like bankruptcy proceedings, anyone, including growers, can easily obtain that information at their own initiative. Similarly, growers, not dealers, are in the best position to understand a grower's variable costs. In addition, AMS should not include in its required disclosures any item that would be included in the poultry grower contract arrangement.

Further, AMS must ensure that competitively sensitive information is protected. Some of the information that would be disclosed under the Proposed Rule may be competitively sensitive information. For example, grower payments may provide information about the company's costs and live side operations. Breeder information, such as strategic changes in breed or efforts to deal with chick health, might be proprietary, especially if a third-party breeder is used. Details about feed outages or other internal operations might reveal proprietary information that would adversely and unfairly negatively impact a company's competitive position. To the extent that any competitively sensitive or proprietary information is required to be released under a final rule, it is imperative that growers respect the proprietary nature of the information and not share it beyond their advisors, and that companies be allowed to take steps to ensure their information is properly protected.

Finally, in limiting the Proposed Rule to only those factors that might conceivably advance AMS's stated goal, AMS should eliminate the proposed governance framework, which, as explained, is unnecessary and costly.

2. Scope of Regulated Parties

We urge AMS to exclude from the scope of the Proposed Rule poultry grower compensation systems where there is a fixed base pay plus an incentive-based bonus, regardless of how the bonus is calculated. The regulations appear to contemplate only two contract types—flat payment or a tournament system. In today's business environment, there are many forms of contracting. NCC urges AMS to ensure its proposed regulations allow sufficient flexibility to accommodate different types of contracts and allow for innovative contracting. AMS's proposed regulations should maintain a key feature of the current grower compensation system: allowing performance incentives for global competitiveness of the industry and rewarding the top performers and those who invest in state-of-the-art practices and technologies. AMS can accommodate market innovation and other ways of contracting by revising the definition of "poultry grower ranking system" in 7 CFR § 201.2 to address grower base payments as follows:

Poultry grower ranking system means a system where the contract between the live poultry dealer and the poultry grower provides for **base** payment to the poultry grower based upon a grouping, ranking, or comparison of poultry growers delivering poultry during a specified period.

In addition, the contract scenarios identified in the Proposed Rule are overly simplified. For example, a poultry growing contract could have both new and older housing in the same complex under the same agreement. In addition, poultry growing contracts may cover multiple complexes. AMS should ensure the Proposed Rule reflects and accommodates differing contract structures.

Further, AMS should not exempt small dealers from the requirements of this rule. In § 201.100(e), the Proposed Rule would exempt small dealers slaughtering fewer than two million live pounds of poultry weekly from needing to provide a true written copy of the poultry growing arrangement and the Live Poultry Dealer Disclosure Document ("Disclosure Document") to growers. If, as AMS asserts, the information in the Disclosure Document is necessary for growers to make informed decisions about investments in their business, no dealer should be exempt from these requirements. The exemption could result in growers leaving a dealer complying with the regulations for a small dealer not subject to the same requirements.

3. Timing of Disclosures

The Proposed Rule would require dealers to furnish the Disclosure Document whenever a dealer seeks to renew, revise, or replace an existing growing contract or establish a new contract that does not contemplate modifications to existing housing specifications. Because contracts may be regularly amended to reflect changes in the business environment, NCC urges AMS to modify the Proposed Rule to require dealers to furnish the required information only at initial signing, and then on a periodic basis (e.g., every year). This scheduled disclosure of information would reduce administrative burdens on dealers, ensure uniformity of the disclosures provided, and alleviate confusion from growers who may receive different information at different times.

B. AMS Should Address All Amendments to PSA Regulations in One Rulemaking. Otherwise, All Changes Required of Industry Should Have a Single Implementation Date

NCC is concerned that AMS is taking a piecemeal approach to promulgating regulations for industries regulated by the PSA and urges the agency to propose and implement all amendments in a single rulemaking process. This Proposed Rule and the advance notice of proposed rulemaking (87 *Fed. Reg.* 34814 (June 8, 2022)) issued on the same day as the Proposed Rule signal AMS intends these regulatory actions to be the first in a line of planned changes affecting the poultry industry. Imposing constant regulatory changes on poultry growers and dealers would spurn confusion, needless costs, uncertainty, and frustration with shifting requirements.

In this already highly regulated sector operating on thin margins, and given the multitude of uncertainty from external market factors, businesses need certainty and predictability from regulators. Dealers can only effectively shield growers from risk as described in section I above if dealers themselves are afforded some level of certainty from regulators. Affected parties can only evaluate the impact of proposed changes and the actual costs of regulations if they are shown the entire regulatory structure the agency proposes to implement. A piecemeal approach obscures USDA's true intent, hides costs of constant transitions, and fuels distrust in government. NCC urges AMS to be transparent with industry about its plans.

Similarly, NCC anticipates AMS plans to incorporate the changes to 7 CFR § 201.2 (terms defined) in future rulemakings. AMS should afford industry the opportunity to comment on the changes to these definitions with a full understanding of how they will apply to planned amendments.

Even if AMS moves forward with its piecemeal approach to rulemaking, it should implement a uniform effective date for all changes to PSA regulations currently identified in the Unified Agenda, including "Clarification of Scope of the Packers and Stockyards Act (AMS-FTPP-21-0046)" (RIN 0581-AE04) and "Unfair Practices in Violation of the Packers and Stockyards Act (AMS-FTPP-21-0045)" (RIN 0581-AE05). Because the Proposed Rule contemplates that firms develop and audit data in a certain way and that firms must disclose 5 years of data, the effective date for disclosures by definition must be 5 years after the implementation date for the auditing system. Any effective date before 5 years after the implementation of the auditing system would prevent consistent comparison and undermine the usefulness of any disclosures. This timeframe also allows industry sufficient opportunity to develop and implement the required data management systems and to educate growers on information provided. Any period less than 5 years is not sufficient because the industry would not be able to effectively adapt in light of the considerable differences in what and how information is maintained.

C. AMS Should Provide Ample Educational Resources for Regulated Entities Regarding the Complex Changes in This Rule and Provide Clarity on How the Proposed Regulations Would Be Enforced

Based on our communications with members to date and reporting on the proposed regulations, we anticipate significant uncertainty from regulated entities as to how AMS intends to implement this rule. Given the breadth, complexity, and unique level of involvement in poultry growing contracts, NCC strongly urges AMS to provide additional clarity for industry through educational materials, information sessions, and template disclosures.

In addition, AMS should work to ensure growers fully understand the information provided to them by dealers, including what it does and does not say. Instead of requiring contracting documents to include boilerplate disclaimers, AMS should undertake education initiatives to ensure contracts are fully understood. Finally, AMS should ensure its educational initiatives reach non-English-speaking growers. Specifically, AMS should ensure any educational events, guidance, templates, and other regulatory materials are available in other languages, particularly Spanish.

As it develops implementing and educational materials, AMS should clarify how the agency plans to enforce its rule. In particular, NCC seeks clarity on the following enforcement-related components:

- How AMS will inspect the disclosure and auditing framework, including how AMS will train staff to inspect financial accounting systems;
- How frequently the Disclosure Document must be updated;
- How dealers can properly update the Disclosure Document to correct errors if identified;
- How required disclosures should reflect operational changes to placement schedules;
- If AMS moves forward with including forward-looking projections in the rule, how the agency will evaluate the accuracy of these projections. As discussed below, we reiterate AMS should not penalize dealers if it forces them to estimate projected income and costs that later turn out to be imperfect.

D. Comments on Proposed 7 CFR § 201.100

1. Requirement To Include Minimum Placements and Stocking Densities in Poultry Growing Contracts, § 201.100(b)(5)

The Proposed Rule would create a new paragraph at renumbered § 201.100(i)(2) requiring that contracts specify the minimum number of annual placements and the minimum stocking density for such placements. Imposing mandatory terms on private contracts is beyond the stated goals and scope of the rulemaking, and these changes should be removed from any final rule. According to AMS, this rulemaking is intended to address perceived information asymmetries through mandatory information disclosures to help growers better predict the income they might earn under poultry growing arrangements. But these proposed requirements are not mere disclosures. Rather, they would impose mandatory terms on private contracts, which is vastly different than requiring information disclosures.

Poultry growing contracts do not necessarily include terms addressing guaranteed placement frequencies or durations. Accordingly, this provision would potentially require amending potentially every single grower contract. Doing so would impose substantial costs not accounted for in AMS's cost analysis, and it could cause substantial confusion if growers are all suddenly presented with new contracts to accommodate these terms. Moreover, the Proposed Rule does not account for the possibility that a grower may not wish to agree to amend a contract or, worse, could create a situation where a grower might refuse to enter into an agreement for the express goal of placing a dealer in a position of regulatory noncompliance to bolster a negotiating position. Moreover, including this information as a contract term is redundant to the information that would be included in the Disclosure Document, which would also include information about minimum annual placements and minimum stocking densities.

Further, these proposed provisions fail to accommodate the breadth of potential contracts used in the industry. Many growers operate under flock-to-flock contracts, which some growers may prefer because they provide flexibility to choose whether to take a flock and the ability to seek other business partners. It is entirely unclear how a minimum annual placement rate and minimum stocking density would even be determined for a flock-to-flock contract. To the detriment of all involved, this provision risks eliminating flock-to-flock arrangements altogether. On the other end, some growers operate under long-term contracts of ten, fifteen, or even twenty years. These long-term contracts have their own benefits, including providing stability for growers and dealers alike and helping parties commit to a long-term business strategy. But it is impossible for anyone to predict placement frequencies or stocking densities ten or fifteen years out. For example, factors like increased growth rates, faster or slower growing breeds, target bird size, and cleaning practices, to name a few, could change significantly over a 10 year period, and all affect placement frequency and stocking density (for example, faster-growing birds may reduce grow-out time, allowing for more frequent placements, or larger target weights may reduce initial stocking density). By requiring that contracts guarantee minimum annual placements and minimum stocking densities for the length of the contract, AMS risks driving many desired contract types out of the market.

Moreover, guaranteeing a minimum number of placements risks putting a party in breach of a contract and in violation of AMS regulations under situations that would not violate the parties' bargained-for agreement or constitute a PSA violation, leading to absurd results. For example, a contract signed in November that guarantees three flocks annually would likely see a grower receive at most one flock that year, which could be viewed as a breach of the contract and a violation of the Pro-

posed Rule. A contract signed in late December might not see any flocks delivered that year. Similarly, any number of factors might result in a grower receiving fewer flocks than initially anticipated or even no flocks in a given year, such as natural disasters (floods, fires, hurricanes), public health emergencies and pandemics, avian disease outbreaks and APHIS quarantines, unexpected market shocks, a change in target bird size or breed, disruptions to key inputs, and planned facility repairs or renovations. *Force majeure* clauses or other contract provisions might address these situations, but it is unclear which provision AMS would view as prevailing, and in any case significant confusion could result. Likewise, a dealer should never be required to continue providing birds to a grower who neglects or mistreats a flock, but a guaranteed placement provision might expose a dealer taking steps to protect bird welfare to breach of contract claims and allegations of PSA violations. Nor does this provision address how to handle a situation in which a grower does not want to receive a flock at a given time, perhaps due to medical issues, farm repairs, improvements, or labor shortages.

Finally, AMS's concerns that contracts need to guarantee minimum placements and densities for growers to make sound financial decisions is misplaced. Chicken growers are experienced businesspeople who understand their business, and they have been able to make good decisions without this information for decades. Further, many farm operations are financed, typically through loans from sophisticated agricultural lenders. As demonstrated by decades of expanded poultry production,¹⁹ for years, banks have had little problem determining whether a grower's future income stream is sufficient to support a loan, even without guarantees. The market has thus demonstrated this is not an issue.

In light of these considerations, AMS should not finalize proposed § 201.100(i)(2). If AMS were to conclude this information must be provided, it would be more consistent with the rulemaking's rationale to include minimum annual placements and minimum stocking densities as tentative projections to be included in the Disclosure Document at proposed § 201.100(b)(5) (discussed next). If AMS were to keep the proposed § 201.100(i)(2) provisions in a final rule, it must revise the rule to accommodate the above concerns.

2. Disclosure of Minimum Placements and Stocking Density Disclosures in Proposed § 201.100(b)(5)

All of the issues identified above in discussing proposed § 201.100(i)(2) also apply to the requirement in proposed § 201.100(b)(5) that the Disclosure Document include the minimum annual placement frequency and minimum stocking density, and it is critical that AMS ensures that any final Disclosure Document requirement address those concerns as well. Moreover, given that AMS anticipates that growers will make financial decisions based on the Disclosure Document, information about placements and stocking density should be presented as tentative projections and expressly not as guarantees. The Disclosure Document should make clear that actual placements and densities may vary and will depend on any terms that might be specified in the contract as well as factors that might be outside any party's control and that growers should not rely on the projected placements.

3. Litigation Summary, § 201.100(c)(1)

The proposed requirement in § 201.100(c)(1) to include [litigation] information should be omitted from any final rule because it is not relevant to a grower determining how much income the grower might anticipate receiving under a contract. If the purpose of the Proposed Rule is to provide growers with more information to determine how much income they might earn through a contract, it is hard to understand how information about litigation—much of which likely has nothing to do with grower contracts—is relevant to calculating what the contract says a grower might earn under different situations. In fact, the proposed litigation disclosure presents a number of issues:

- **The proposed disclosure is overly inclusive of all litigation.** The proposed disclosure would appear to require a dealer provide information about all litigation between the dealer and growers, without regard for the nature or merits of the case. The proposal would appear to require even the disclosure of a case that resulted in sanctions against the plaintiff for filing frivolous claims. Especially for larger companies, this could result in a lengthy disclosure of virtually no value that is difficult and costly to maintain and distracts from more important elements of the agreement. There is no useful reason to require all this

¹⁹United States Department of Agriculture Economic Research Service, *Poultry Sector at a Glance*, (June 13, 2022) <https://www.ers.usda.gov/topics/animal-products/poultry-eggs/sector-at-a-glance/>.

be listed, especially when companies have multiple subsidiaries, and many lawsuits would have nothing to do with PSA issues.

- **The disclosure risks skewing incentives in litigation.** Requiring that dealers list all litigation could create skewed incentives not in the interest of any party to a litigation. For example, if a dealer knows that settlements will be listed on a disclosure, the dealer might be reluctant to settle cases for fear of projecting a reputation as being quick to settle and thus inviting more litigation, which would in turn make it more difficult for growers and dealers to resolve disputes in an efficient manner.
- **Keeping this information current would be extremely burdensome.** Especially for larger companies that are more likely to have multiple cases ongoing, it would be highly burdensome for companies to have to maintain and update this information on an ongoing basis, especially with cases involving multiple parties and highly active dockets.
- **Disclosure might violate court orders and settlement agreements.** There are a number of situations in which a dealer might not be permitted to disclose information about a litigation. For example, a key filing might have been made under seal, or a settlement or court order might include a confidentiality agreement preventing the parties from disclosing any related information. As written, proposed §201.100(c)(1) would put a dealer in the position of having to choose whether to violate AMS regulations by not disclosing a case and certifying the disclosure or violating a court order or settlement agreement.
- **The 6 year period is inconsistent with the rest of the Proposed Rule.** It is not clear why AMS proposes that the litigation disclosure cover 6 years while other aspects of the proposal, such as the financial disclosures, cover shorter time periods.
- **It is unclear how to determine if a case fits into the disclosure window.** As proposed, a dealer must provide a summary of litigation “over the prior 6 years.” It is unclear from the proposal whether this would include cases filed in the past 6 years, cases that had an open docket at any point in the past 6 years, or something else.

4. Bankruptcy Information, § 201.100(c)(2)

As with the proposed litigation disclosure, it is unclear why disclosing a dealer’s bankruptcy history would be relevant to determining how much income a grower might anticipate earning under a contract. A grower’s potential income is based on the contract, not the dealer’s bankruptcy history. Bankruptcy history is publicly available if a grower wants the information. For larger companies with multiple subsidiaries, there may be relatively complex histories, making this information both confusing and cumbersome to maintain. It is also not clear why AMS proposed a 6 year period for bankruptcy history when other provisions have shorter periods.

5. Statement Regarding Sale of Grower Facilities, § 201.100(c)(3)

Again, it is unclear how this provision relates to determining how much income a grower might anticipate earning under a contract, and including it in the Disclosure Document is unnecessary. If the parties wish to make any binding commitments about how facility sales will be handled and whether a contract may be transferred, the parties can address that in the contract itself.

6. Financial Disclosures, § 201.100(d)

The proposed financial disclosures in proposed § 201.100(d) would require dealers to compile complex information, imposing significant costs on dealers but providing growers little of value because past economic information cannot be relied on to predict future economic conditions. Fundamentally, a grower’s income is determined as specified in the contract and driven primarily by the grower’s care and skill. If these disclosures are required, AMS should consider several points:

- **Extraneous information not directly related to grower payments should be omitted.** As discussed earlier, financial disclosures should require only the basic information necessary for a grower to make a general assessment of potential income under the agreement. Other information is extraneous for this purpose and should be omitted given the burdens in assembling and certifying this information. For example, the Disclosure Document should not have to include contact information for a state university extension service (proposed § 201.100(d)(5)). That information is readily available through other channels, and AMS or state organizations can promote it through educational outreach.
- **Flexibility is critical.** Dealers should be provided as much flexibility as possible in how they present the required information and should be expressly per-

mitted in the regulation to provide additional qualification or disclaimers as they determine may be appropriate.

- **Information should be limited to only the grower’s local complex.** Different geographic areas face different economic conditions that have little or no bearing on grower income in different areas. For example, different regions will have different costs of living, state and local tax structures, state and local regulatory burdens, land costs, fuel costs, and labor costs, to name but a few variations. Grower incomes may vary across regions—even within the same company—to account for these differences. Presenting income across a company or for different complexes would be confusing because the income might vary to reflect higher costs in some regions and would do nothing to help a grower determine how much that grower might earn in his or her local complex. The disclosure in proposed § 201.100(d)(1) should be omitted from any final rule.
- **The quintile-based reporting system is too complex.** Reporting normalized income by quintile would make the information difficult to read and understand. If this is included in a final rule, for simplicity, the disclosure should present the average income for the complex and the upper and lower bounds of the range.
- **Five years of data is too long to be meaningful.** Changes in markets, product offerings, demand, global trade, and inflation all make it difficult to draw meaningful conclusions from 5 year old data. If AMS mandates any such disclosure, a shorter timeframe would be more appropriate.
- **The disclosure needs to include a disclaimer that past income does not guarantee any future payments.** The amount of detail called for in the proposed financial disclosures risks confusing growers into making inappropriate assumptions about future income. Just as with financial investments, mandatory backward-looking generalized income information should be accompanied by a disclaimer making clear that past performance or income does not guarantee any future income, and that actual income will be governed by the terms of the contract, the parties’ performance, and possibly factors beyond anyone’s control. Dealers should also be permitted to provide any additional disclaimers in the Disclosure Document that they determine may be appropriate.
- **Forward-looking projections should not be required under any circumstance.** The supplemental forward-looking income information contemplated in proposed § 201.11(d)(3) is inappropriate and should be omitted. First, it is entirely unclear how a dealer might know that past grower annual payments would or would not reflect projected grower payments, as no one can predict future economic conditions. Second, it is unclear what is meant when the proposal references past payments not reflecting future payments “for any reason.” Past grower payments will never exactly match future grower payments, and there are any number of reasons that might cause changes. For one, inflation means that there will inevitably be changes year-to-year in payments, but that should be no reason for needing to project future income. Third, it is impossible for dealers or anyone else to predict what grower payments will be in the future, and requiring dealers to make future projections puts them in an impossible position while doing a disservice to growers, who might mistakenly treat projections as guarantees. As recent years have demonstrated, natural disasters, geopolitical events, supply chain issues, and inflation can all affect future economic conditions, and they are impossible to predict. Fourth, it is unclear how far into the future any projections would need to be made. Instead of providing forward projections, all financial disclosures should include a caveat that past information is not indicative of future results and that results will depend on a variety of factors, some outside any party’s control, as well as the grower’s performance.
- **If projections were required, they must be qualified and exempt from any certifications.** Projections are by definition unlikely to be completely accurate, and in many cases, even reasonable projections could be off by a significant amount. It is impossible to certify the accuracy of a forward-looking projection, which is one reason they are treated with such caution in the financial world. If projections were to be required, they must be exempt from any certifications, as no officer can certify that a projection will be correct. Moreover, projections would need to be accompanied by substantial qualifiers explaining that the projections are unlikely to reflect actual payments and should not be relied on.
- **The grouping scenarios in the Proposed Rule are too simplistic.** The Proposed Rule appears to contemplate that a grower will raise the same type

of bird in the same type of housing. In reality, some growers may have a mix of older and newer housing and may raise distinct types of birds. It is unclear how a dealer would be expected to treat these and other types of mixed situations in preparing the proposed financial disclosures.

- **AMS must clarify how to provide historical data for periods before the effective date of any final rule.** It is unclear how AMS expects companies to obtain and handle financial data from periods that predate the effective date of any final rule. Companies may or may not currently possess the historical data required to prepare the proposed disclosures. In the event a company does possess such data, the company did not develop and maintain it in anticipation of being used in financial disclosures. AMS would need to explain how dealers can comply with the financial disclosure and certification requirements if historical data predating a final rule is required.
- **Information about grower variable costs is inappropriate.** Dealers should not be required to collect, produce, or certify the accuracy of information about grower variable costs. Growers are responsible for understanding and controlling their costs of production, in keeping with the efficient allocation of responsibilities in poultry grower compensation frameworks. Dealers do not systematically maintain all of this information, and any information provided could be incomplete or inaccurate. Proposed § 201.100(d)(4) should be omitted. If the provision were included in a final rule, it should be accompanied by significant qualification, it should be specifically exempt from any certification, and it should not have to be included in any governance framework.

7. Governance and Certification, § 201.100(f)

The Proposed Rule includes a governance framework that AMS states is intended to “ensure the accuracy and completeness of the Disclosure Document, and ensure the dealer’s compliance with its obligations under the PSA and the regulations.” AMS hopes the framework will ensure corporate attention and accountability. Such a governance framework is unnecessary for the proposal, needlessly costly and complex, and inappropriate for the type of information required in the proposed disclosures. In addition, AMS has grossly underestimated the costs associated with this portion of the Proposed Rule, especially because this requirement goes beyond the scope of this proposal and requires firms to evaluate their obligations under all PSA regulatory requirements. We urge AMS to omit this requirement from the final regulations for these reasons and those discussed earlier in these comments.

If AMS were to include a governance framework in a final rule, it should simplify the requirements and provide additional clarity on what is required. AMS should particularly address the following:

- **Clarify what “reasonably designed” means.** AMS must clarify the agency’s expectations for a “reasonably designed” governance framework, including providing an example of how such a framework is designed with specifics about personnel needs, review frequency, frequency of data updates, and nature of executive review. The term “reasonably designed” should be fully defined.
- **Omit the requirement for certification by an executive officer.** This requirement is unnecessary and inappropriate for a contract document. It is inappropriate to require an individual corporate official to personally certify the proposed disclosures. A grower could have recourse if deceptive statements were made in an agreement regardless of whether someone certifies the information, and including this requirement appears to be motivated by an effort to inject individual liability into what is in essence a private commercial contracting issue, which is wholly inappropriate. AMS should continue its longstanding approach of permitting companies to determine how best to comply with any regulatory requirements. If a certification is included, it should certify that the disclosures are made pursuant to a system designed to capture generally accurate information rather than to the accuracy of any particular information.
- **Exempt any forward-looking financial information required by the regulation from any certification.** This information is, by definition, projections or estimates, the accuracy of which cannot be guaranteed. Requiring a certification for forward projections could lead growers to misunderstand the nature of the projection and rely on it as guaranteed income.
- **Clarify “material fact.”** In relation to the certification, AMS needs to explain and provide examples of what constitutes a “material fact” such that its untruthfulness or omission would render the Disclosure Document misleading.

8. Receipt by Growers, § 201.100(g)

Proposed § 201.100(g) should be revised to require that a dealer maintain documentation that required disclosures were transmitted to a grower through a reliable means of communication, and the grower's signature should not be required as evidence of receipt by the grower within the required time period. The Proposed Rule appears to require that the dealer obtain the grower's signature as evidence that the disclosures were provided within the required timeframe. However, a dealer cannot control whether a grower signs the disclosures. For example, mail delays, illness, internet outages, a grower's delay in opening mail or email, vacation, natural disasters, or even a grower's refusal to sign could all prevent a dealer from obtaining the signature required under proposed § 201.100(g)(2) despite timely delivery of the disclosures. AMS should revise any final rule to expressly allow dealers to show they used a reliable means of communication to deliver a disclosure in a timely manner, such as placing the disclosure in the mail, sending it by email, or delivering it by hand.

E. Comments on Proposed 7 CFR § 201.214.

1. Placement Disclosures, § 201.214(b)

If the placement disclosures in proposed § 201.214(b) are included in a final rule, AMS should consider several points:

- **“Health impairments” requires clarification.** It is unclear what would constitute a health impairment of the flock or breeder flock under proposed § 201.214(b)(6). Health impairments requiring disclosure should at the most be limited to a medical diagnosis made in writing by a licensed veterinarian that could reasonably affect the growth and mortality of the broiler flock.
- **Third-party breeder information should be considered.** Some companies might obtain birds or eggs from third-party breeder operations, which might consider the identity of the source farm to be proprietary information or subject to a nondisclosure agreement. AMS should address how a dealer should make the placement disclosures when required information is unavailable to the dealer or when a dealer is prohibited by law or contract from providing the information.
- **Reinforce that adjustments are not required based on the disclosed information.** Proposed § 201.214(b)(7) references the disclosure of “Adjustments, if any, that the dealer may make to the calculation of the grower's pay based on the inputs in (1) through (6) of this paragraph.” We understand this to mean that dealers are not required to make adjustments based on the referenced information and that a payment system that does not make adjustments based on this information would not be in violation of the PSA. We urge AMS to reinforce this point in any final rule.

2. Settlement Disclosures, § 201.214(c)

Proposed § 201.214(c) requires disclosure of much of the same information as called for in § 201.214(b), and the issues raised in the above discussion apply to proposed § 201.214(c) as well. Moreover, dealers already provide the information used to calculate a grower's payment under their contracts. Providing the additional information called for in proposed § 201.214(c) is unnecessary and would be confusing to the extent the information is not actually part of the contracted-for settlement calculation. If this disclosure were included in a final rule, AMS should address the following:

- **Include proper context for the information.** Because disclosing at settlement information not actually used to calculate payment could be confusing, dealers should be permitted to include a statement providing context around the information, including a statement that the disclosures address only a limited number of factors and that the disclosed factors are unlikely to fully or even substantially explain a grower's relative performance.
- **Clarify how to address multiple housing types.** It is unclear how a dealer should address in the comparison sheets situations involving different housing types on the same farm. AMS should clarify this and other situations that do not fit neatly into the scenarios contemplated in the Proposed Rule.
- **Clarify situations in which not all chicks are sexed.** AMS should provide clarity on how to address situations in which the sex of birds may be known for some but not all of the growers in the settlement pool.
- **Clarify feed disruption.** AMS should clarify exactly when a feed disruption occurs, such as when the feed lines have run completely empty. AMS should

also address how to handle a situation in which all participants in the settlement pool experienced substantially the same feed interruption (for example, in the case of a natural disaster that affected all growers in the settlement pool).

* * * * *

NCC appreciates the opportunity to comment on the Proposed Rule. Please feel free to contact us with any questions. Thank you for your consideration.

Respectfully submitted,



MIKE BROWN,
President,
National Chicken Council.

APPENDIX A

Live Chicken Production Trends [2022 Revision]



[Chicks].

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March 2022

Disclosures: This study was prepared for the National Chicken Council. FarmEcon LLC was compensated for its preparation.

Introduction

This study presents the results of a 2022 broiler industry survey designed to capture 2021 key live chicken production statistics. The survey was designed by FarmEcon LLC and data were collected from National Chicken Council (NCC) member companies. Conclusions drawn are those of FarmEcon LLC. Statistics collected from the responding companies included:

1. Number of live chicken production farmers;
2. Current contract duration;
3. Farmer tenure;
4. Newly granted contract duration;
5. Farmer age;
6. Farmer family experience in live chicken production;
7. Number of persons on waiting lists for entering live chicken production;
8. Existing farmers wishing to expand current operations;
9. 2021 farmer turnover by major reason for departure and;
10. Variability of average live chicken contract fees compared to beef and pork prices.

In addition, the study summarizes several key trends in broiler production efficiency and returns. Loan quality data for live chicken producers will be discussed.

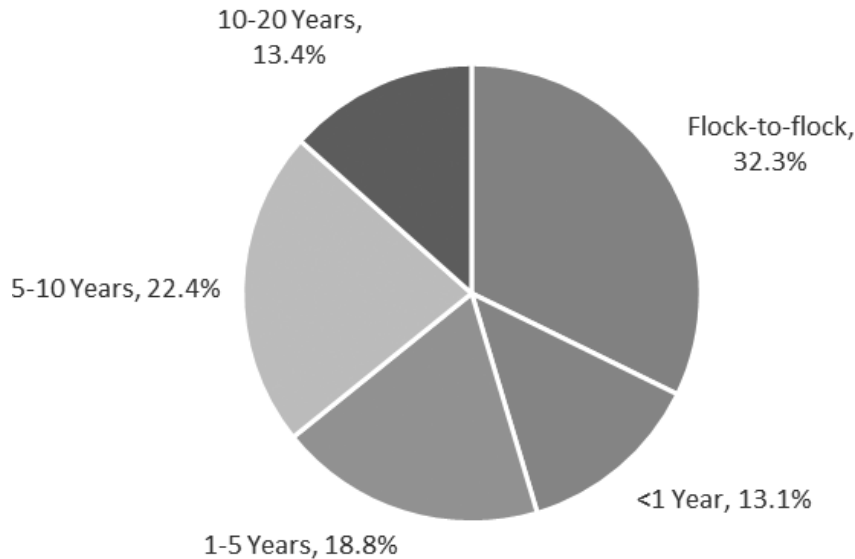
Studies on broiler farmer returns and loan quality are not revised. There are no updates available for these two studies that this study utilized in 2015. However, more recent USDA 2021 poultry farmer financial returns data were found and are cited.

Survey Results

The survey was collected during early 2022. Twenty companies representing 83% of 2020 top 32 U.S. chicken company production as reported by Watt Publishing responded.¹

1. Companies responding to the survey reported on 8,971 live chicken farmers. The reported farmers held 10,921 production contracts. The 83% response rate implies that the survey is very representative of all 32 top chicken companies.
2. Companies responding reported current contract duration, in years, as shown below.

Contract Length



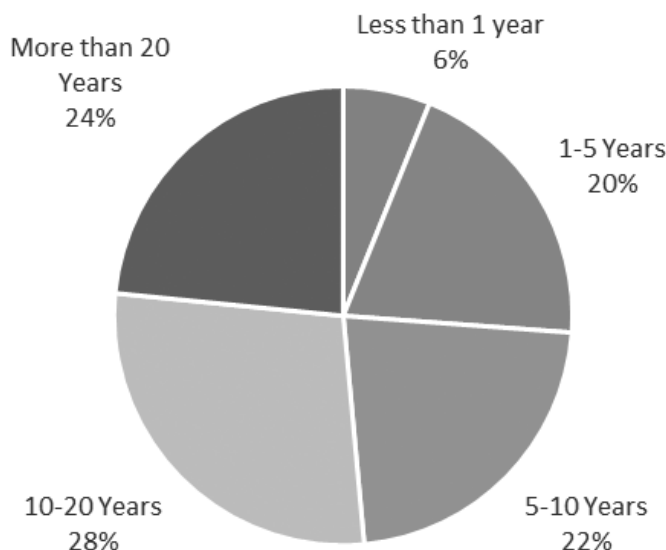
The 32% flock-to-flock percentage is 10 points lower than the 42% reported in a 2015 NCC survey done for the prior version of this report. Other contract durations are correspondingly higher than the prior report.

Flock-to-flock contracts have no obligations for either party past the current flock being grown. These contracts have been criticized for not offering farmers long term assurance of live chicken production with their current company. However, long term contracts also can be canceled for poor performance and not meeting contract terms. In reality, a multi-year contract offers little additional assurance over a flock-to-flock contract. Regardless of stated contract duration, both parties need to agree that the arrangement is beneficial if the contract is to continue.

Companies reported that long term contracts are required, and granted, for new construction. In most cases these contracts run for 10 years or longer as required by lenders.

3. Respondents reported on the length of time that their current farmers have been with their company. Results are shown in the graph below.

¹Watt Publishing. *Poultry USA*. “2020 Top Poultry Companies.” March 2021. Pp 14–50.

Farmer Tenure

More than half the farmers have been with their current company for 10 years or more. Almost $\frac{3}{4}$ have been with the same company for 5 years or more. These results are almost identical to the prior version of this report.

4. Companies reported on contract duration for newly granted contracts. Responses fell into two broad categories. For contracts granted on newly constructed houses, whether expansion or for a new farm, contracts are granted to satisfy any lender requirements. That was reported to be generally 10 to 15 years. At the other end of the spectrum, many new contracts were granted on a flock-to-flock basis on existing farms with no lender requirements involved. Several companies also reported new multi-year contracts are granted even without a lender requirement involved.
5. Companies reported on the ages of their current farmers. The results for those who track this data show that the vast majority, 80%, of farmers are 40 years old or older. Only 14 farmers were reported to be under 20 years old. This age structure together with the length of time farmers have been with a company is seen as implying that live chicken production is dominated by experienced live chicken producer owner-operators.

The live producer age structure implies that these farmers are in the business for the long term. It also implies that current farmers are, for the most part, financially sustainable and stable. The relatively few farmers under the age of 30 implies that entry may be somewhat difficult for that age group.

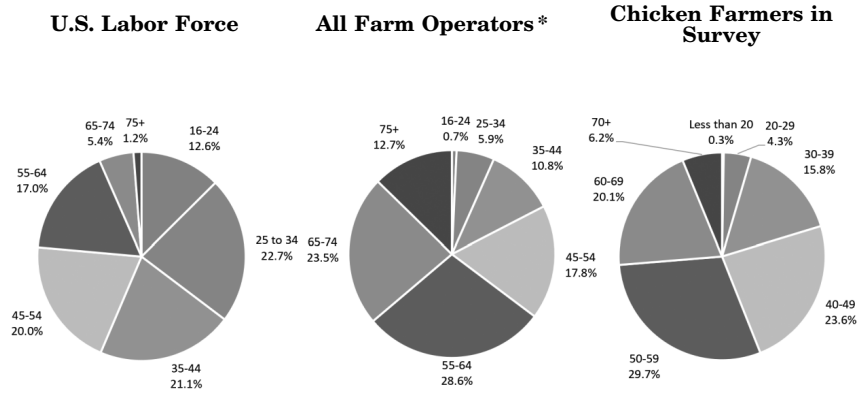
In contrast to the overall U.S. labor force,² but in common with all farm operators, chicken farmers have relatively few participants in the under-30 age cohorts. Except for the oldest cohorts, chicken farmers and all farm operator³ ages are much more comparable.

Ages of chicken farmers indicate that they are generally typical of other farmers but leave chicken farming at a somewhat earlier age. This can be attributed to factors such as ability to finance earlier retirement, time demands of chicken raising, or that farm operators outside chicken farming may remain part-time farm producers longer into their later years. The relative lack of younger people in farming reflects the difficulty of financing a farm at an early age *versus* obtaining employment in other sectors. It is often the case

²U.S. Bureau of Labor Statistics. Employment database found at <http://www.bls.gov/cps/cpsaat03.htm>. Accessed 2/27/2022.

³USDA. 2017 Agricultural Census report found at [USDA/NASS Census of Agriculture Chapter 1, Table 52 \(https://www.nass.usda.gov/Quick_Stats/CDQT/chapter/1/table/52/state/US/year/2017\)](https://www.nass.usda.gov/Quick_Stats/CDQT/chapter/1/table/52/state/US/year/2017). Accessed 2/27/2022.

that entry into farming happens as a result of an aging farm operator within the family of the entering farmer being replaced by a younger family member. Age cohorts for the overall labor force, all farm operators, and chicken farmers of the surveyed companies are shown in the graphs below.



6. Companies reported on current farmer family experience in contract chicken production. Of the current farmers 26% were reported have to have had a family background in this type of farming.
7. Companies reported that they have 1,672 applications from potential live chicken producers who would like to get into chicken production. Those applications are 19% of the current farmers reported. This statistic is an indication of the attractiveness of this type of farming for those not involved in it today.

Also reported were 335 open applications from existing farmers for expansion of their existing operations.

Taken together, these responses indicate active expansion and investment interest on the part of potential and current farmers. Indirectly the interest level shows that a significant number of persons outside and inside live chicken production regard it as an attractive farming option and investment opportunity.

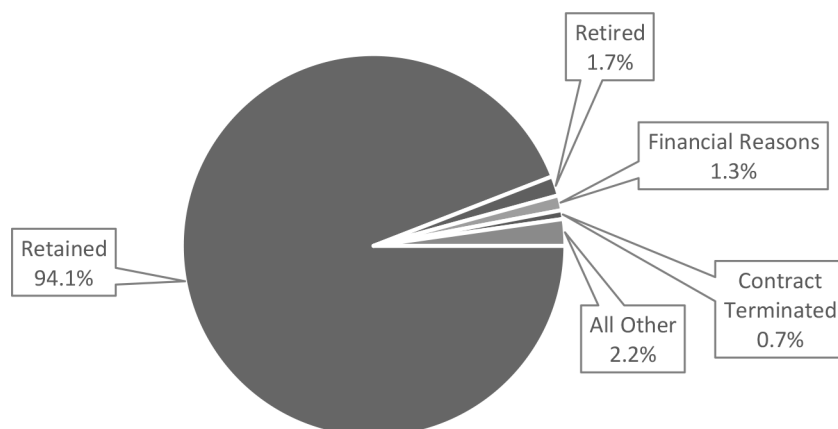
8. Companies reported on reasons for 2021 farmer departures. There are many and varied reasons that farmers might leave a chicken company. These, include among others, retirement, financial distress in the farming operation, declining health, farm catastrophes, to take an offer from another company, and contract termination by a company.
9. Unfortunately, as in any business arrangement, not every partnership works out to the satisfaction of both parties. In the chicken farming business, we see both sides of this fact. Producers can and do leave a company for what they regard as a better opportunity with another company. Companies have the right to terminate a farmer that is not meeting their performance expectations or is not otherwise living up to the terms of the contract.

The least likely reason, accounting for only 0.7%, for a farmer leaving broiler production was contract termination on the part of their company. There are several reasons for a contract termination, but the major ones are poor bird performance and failure to adhere to contract terms.

Put into a perspective of the total number of contract producers and reasons for their leaving a company, contract termination was the least numerous in 2021. Results of the survey are presented in the graph below.

* Operators whose principal occupation is farming, 2017 Census of Agriculture.

2021 Farmer Departures



In 2021 563, or 6.3%, of live chicken farmers left their company. The “All Other” category includes farmers who moved to a different company. In many cases farmers who left chicken production sold facilities that remained in production after that farmer departed chicken raising. Only if a production facility is so obsolete that it is not financially attractive to keep it in production is it normally abandoned.

Though not directly comparable, employee turnover due to job separations in the overall economy averages 3–4% per month.⁴ The 6.3% contract farmer figure is for an entire year, and includes retirements. The major difference between employee turnover and live chicken production is that the chicken farmer has a significant financial investment at risk in the business whereas most employees do not. That farm investment makes chicken farmers, and farmers in general, less mobile than employees.

Live Chicken Production Technical Performance

The table below shows selected average live chicken performance trends since 1925.⁵

Year	Market Age	Market Weight	Average Daily Gain	Feed to Meat Gain	Feed Per Bird	Mortality
	<i>Average Days</i>	<i>Pounds, Liveweight</i>	<i>Grams</i>	<i>Pounds of Feed per Pound of Live Broiler</i>	<i>Pounds Feed Per Broiler</i>	<i>Percent</i>
1925	112	2.50	10.12	4.70	11.75	18.00
1935	98	2.86	13.24	4.40	12.58	14.00
1940	85	2.89	15.42	4.00	11.56	12.00
1945	84	3.03	16.36	4.00	12.12	10.00
1950	70	3.08	19.96	3.00	9.24	8.00
1955	70	3.07	19.89	3.00	9.21	7.00
1960	63	3.35	24.12	2.50	8.38	6.00
1965	63	3.48	25.06	2.40	8.35	6.00
1970	56	3.62	29.32	2.25	8.15	5.00
1975	56	3.76	30.46	2.10	7.90	5.00
1980	53	3.93	33.63	2.05	8.06	5.00
1985	49	4.19	38.79	2.00	8.38	5.00
1990	48	4.37	41.30	2.00	8.74	5.00
1995	47	4.67	45.07	1.95	9.11	5.00
2000	47	5.03	48.54	1.95	9.81	5.00
2005	48	5.37	50.75	1.95	10.47	4.00
2006	48	5.47	51.69	1.96	10.72	5.00
2007	48	5.51	52.07	1.95	10.74	4.50

⁴ U.S. Bureau of Labor Statistics. *Job Openings and Labor Turnover Summary. Job Openings and Labor Turnover Summary—2021 M12 Results* (<https://www.bls.gov/news.release/jolts.nr0.htm>) (bls.gov). Accessed 2/28/2022.

⁵ Source: 1925–2020 NCC: <http://www.nationalchickencouncil.org/about-the-industry/statistics/u-s-broiler-performance>. Accessed 12/17/2021.

Year	Market Age	Market Weight	Average Daily Gain	Feed to Meat Gain	Feed Per Bird	Mortality
	Average Days	Pounds, Liveweight	Grams	Pounds of Feed per Pound of Live Broiler	Pounds Feed Per Broiler	Percent
2008	48	5.58	52.73	1.93	10.77	4.30
2009	47	5.59	53.95	1.92	10.73	4.10
2010	47	5.70	55.01	1.92	10.94	4.00
2011	47	5.80	55.98	1.92	11.14	3.90
2012	47	5.85	56.46	1.90	11.12	3.70
2013	47	5.92	57.13	1.88	11.13	3.70
2014	47	6.01	58.00	1.89	11.36	4.30
2015	48	6.12	57.83	1.89	11.57	4.80
2016	47	6.16	59.45	1.86	11.46	4.50
2017	47	6.20	59.84	1.83	11.35	4.50
2018	47	6.26	60.42	1.82	11.39	5.00
2019	47	6.32	60.99	1.80	11.38	5.00
2020	47	6.41	61.86	1.79	11.47	5.00
%1925–2020	- 58%	156%	511%	- 62%	- 2%	- 72%

Over the entire 1925–2020 span there was a steady improvement in live chicken performance. In recent years the industry has held average days to market steady and allowed improved ADG performance to be expressed as higher average market weights. The result has been a bird that is 156% heavier than 1925 on about the same amount of feed and in 58% fewer days. This improvement is due to both investments by chicken companies and the financial incentives offered in the contracts between the companies and their farmer partners.

Feed-to-gain improvement has slowed since 1995. This is entirely due to raising birds to ever-heavier weights at a constant 47–48 average days of age. Note that while days to market stopped declining, average market weights accelerated. All else equal, as chicken weights increase FCR performance tends to decline. Maintaining FCR at increasing average weights over time is actually a significant performance improvement. As will be shown below, increasing average weights at 47–48 days has also been a significant benefit for chicken farmers.

Death loss declines were rapid until about 1960 but have plateaued at 4–5% in recent times.

The next table translates chicken productivity increases into live pounds per square foot produced in farmer facilities and grower payments in current and 2012 dollars.

Year	Average Grower Payment, Cents/Lb., Current Dollars	Average Grower Payment, Cents/Lb., \$2012	Live Young Chicken Production, 000 Pounds	Total Grower Payments, \$2012, 000	% Change	Live Pounds Per Sq. Foot	Average Grower Payments, Per Sq. Foot, \$2012
1990	4.08	6.33	25,549,696	\$1,617,672	4.8%	33.12	\$2.10
1991	4.11	6.19	27,170,780	\$1,680,540	3.9%	33.44	\$2.07
1992	4.14	6.10	28,997,878	\$1,768,320	5.2%	33.77	\$2.06
1993	4.22	6.08	30,474,243	\$1,851,444	4.7%	34.09	\$2.07
1994	4.23	5.96	32,765,941	\$1,954,314	5.6%	34.77	\$2.07
1995	4.32	5.97	34,352,980	\$2,051,491	5.0%	34.93	\$2.09
1996	4.30	5.84	36,034,815	\$2,104,723	2.6%	34.75	\$2.03
1997	4.46	5.96	37,207,401	\$2,219,110	5.4%	34.87	\$2.08
1998	4.53	5.99	38,054,849	\$2,280,572	2.8%	35.26	\$2.11
1999	4.68	6.09	40,444,167	\$2,463,925	8.0%	36.09	\$2.20
2000	4.78	6.07	41,293,525	\$2,508,363	1.8%	36.23	\$2.20
2001	4.87	6.07	42,335,507	\$2,569,145	2.4%	36.03	\$2.19
2002	4.81	5.89	43,715,247	\$2,575,580	0.3%	34.64	\$2.04
2003	4.90	5.88	44,317,531	\$2,606,601	1.2%	37.22	\$2.19
2004	5.04	5.88	46,109,201	\$2,709,460	3.9%	38.56	\$2.27
2005	5.24	5.92	47,578,696	\$2,814,545	3.9%	39.15	\$2.32
2006	5.39	5.93	48,332,516	\$2,863,716	1.7%	38.97	\$2.31
2007	5.43	5.82	49,089,999	\$2,856,088	- 0.3%	38.56	\$2.24
2008	5.64	5.93	50,441,600	\$2,992,748	4.8%	38.84	\$2.30
2009	5.62	5.90	47,752,300	\$2,816,920	- 5.9%	38.19	\$2.25
2010	5.67	5.85	49,152,600	\$2,877,597	2.2%	38.48	\$2.25
2011	5.78	5.86	50,082,400	\$2,932,593	1.9%	39.40	\$2.31
2012	5.85	5.81	49,655,600	\$2,883,515	- 1.7%	39.07	\$2.27
2013	5.93	5.78	50,678,200	\$2,931,633	1.7%	39.12	\$2.26
2014	6.19	5.94	51,378,700	\$3,053,616	4.2%	39.52	\$2.35
2015	6.27	5.97	53,376,200	\$3,187,929	4.4%	40.03	\$2.39
2016	6.42	6.03	54,259,100	\$3,271,137	2.6%	39.93	\$2.41
2017	6.63	6.10	55,573,900	\$3,390,586	3.7%	39.04	\$2.38
2018	6.84	6.15	56,797,700	\$3,494,614	3.1%	38.31	\$2.36

Year	Average Grower Payment, Cents/Lb., Current Dollars	Average Grower Payment, Cents/Lb., \$2012	Live Young Chicken Production, 000 Pounds	Total Grower Payments, \$2012, 000	% Change	Live Pounds Per Sq. Foot	Average Grower Payments, Per Sq. Foot, \$2012
2019	6.93	6.13	58,259,100	\$3,573,514	2.3%	38.08	\$2.34
2020	7.02	6.13	59,405,600	\$3,644,069	2.0%	38.09	\$2.34
% Increase	72.1%	-3.1%	132.5%	125.3%	N/A	15.0%	11.4%

Farmers have benefited from this improved performance. The investments made in genetics and feeds by their companies have increased the throughput of their facilities, resulting in increased production per square foot of their chicken housing. The table above shows how that increased performance has expressed itself in increased constant dollar farmer payments per square foot of their owned chicken housing.⁶ Payments per square foot in 2012 dollars did decline slightly between 2016 and 2020 as companies changed to slightly slower growing breeds.

While average current dollar farmer payments per pound of chicken have increased 72% since 1990, corrected for overall inflation, those payments have declined slightly. However, a 15% increase in average pounds of chicken production per square foot of farmer-owned housing has more than compensated for the decline in inflation-corrected payments per pound. Though declining slightly in recent years, the overall result is that inflation-corrected annual farmer payments per housing square foot have increased over 11.4% since 1990.

The gains reflect both company investments in chicken performance and farmer improvements their housing required to take advantage of that increasing chicken performance capability.

While farmer payments per pound are highly visible to both farmers and their companies, payments per square foot are not. Arguably, payment per square foot is a much better farmer payment and return on investment metric than payment per pound of chicken raised.

Contract farmers and their companies have mutually benefited from the investments that have improved bird performance. Farmers who focus on payment per pound of chicken could be looking at a more meaningful metric that includes both a payment per pound measure and the productivity trend of their housing investment.

Live Chicken Producer Income Stability

Survey data were collected for 2020–2021 monthly average chicken farmer payments per pound of live chicken production. From these data the average, standard deviation and coefficient of variation (CV) were calculated. The average over all months and all companies was 6.76¢ per pound, the standard deviation was 0.11¢ per pound, resulting in a CV of 1.6%. This overall CV is a statistical measure of the variation in monthly average payments relative to the 2 year average. It has little meaning unless compared to other CV statistics for similar data.

Spreadsheet data for U.S. average cattle and hog prices were obtained from the Economic Research Service of USDA and CV was calculated for each.⁷

For all slaughter cattle prices reported in the spreadsheet the average was \$1.42 cents per pound, standard deviation \$0.19 and CV was 13%. For hogs the average was \$0.55 per pound, standard deviation \$0.16 and CV 29%.

Cattle and hog prices represent the payments to producers for each pound of live animal delivered to market. In that respect they are similar to broiler farmer fees received from broiler companies. However, in another respect broiler payments are different. Cattle and hog prices are market-based. Broiler farmer fees are contract-based. Broiler farmer fees paid to individual farmers are subject to variation around the contract average based on terms and conditions that determine premiums and discounts based on broiler performance. However, overall cattle and hog average prices also do not reflect variation in individual producer prices received based on live animal quality that also result in price premiums and discounts.

⁶Sources: Agri Stats bird performance data, obtained 2/1/2022. GDP deflator, 2012=100, obtained from the U.S. Bureau of Economic Analysis at <https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2#reqid=19&step=2&isuri=1&1921=survey>. Accessed 2/15/2022.

⁷USDA/ERS. Historical Livestock Prices Spreadsheet. *LivestockPrices.xlsx* (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ers.usda.gov%2Fwebdocs%2FDataFiles%2F51875%2FLivestockPrices.xlsx%3Fv%3D8178.6&wdOrigin=BROWSELINK>). Accessed 3/1/2022.

Also, cattle and hog producers pay for feed and the animals they raise out of their income stream. Broiler farmers receive feed and chicks from their companies at no cost.

The conclusion is that overall average producer payments per pound of live animal produced are much less variable for broiler farmers than payments to cattle and hog producers.

Live Chicken Producer Financial Performance

Statistics on live chicken producer returns are not routinely gathered by USDA or any known university farm records systems. In 2011 USDA did conduct a special financial survey that included live chicken farmers. Results of that survey are detailed in an August 2014 article by USDA economist James MacDonald.⁸ This study is reported here for historical context.

The survey showed that farmers who raise broilers under contract generally realize higher average incomes than other farm households and other U.S. households. However, the range of household incomes earned by broiler farmers is also wider than other groups.

MacDonald compared average incomes using the median, at which half earn less than and half earn more. In 2011, the median income among all U.S. households was \$50,504, while the median income among farm households was \$57,050. The \$68,455 median for chicken farmers was significantly higher than both all farm households and all U.S. households. Sixty percent of chicken farmers earned household incomes that exceeded the U.S.-wide median.

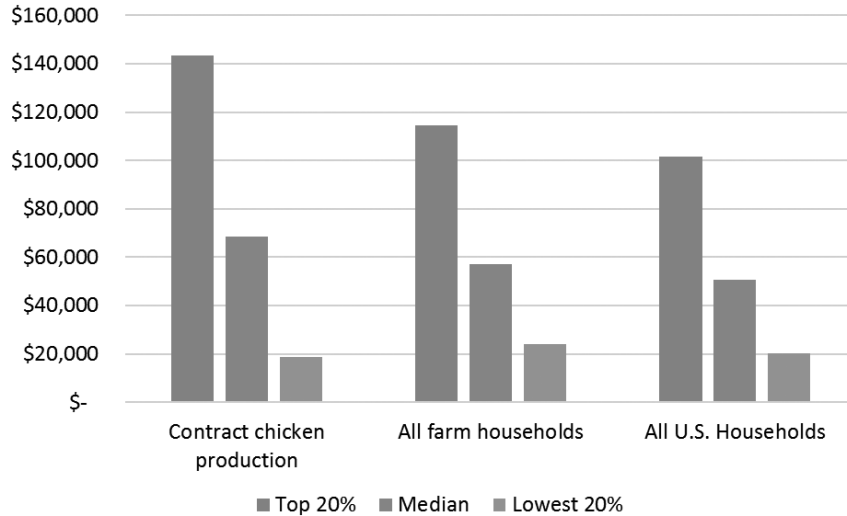
In part the higher income spread was due to a wide scale of live chicken production among chicken operations. Larger producers may also be better at raising chickens and receive higher payments per pound based on their higher-than-average performance. Similar to all businesses, those who are most successful at raising chickens will tend to earn more income than those who are less successful.

MacDonald also points out that the contracting system has substantially reduced some financial risks borne by contract farmers. Feed, medication and baby chick costs are the responsibility of the chicken company. As MacDonald points out, "These risks are not small; feed prices rose or fell by at least five percent in 11 of the 60 months between January of 2009 and December of 2013. Poultry companies also bear production risks that commonly affect farmers. For example, if weather or disease affects mortality among all farmers, base payment rates remain the same."

Comparing the top 20% of live chicken farmer returns to the same statistic for other farm households and all U.S. households shows a significant advantage for top performing contract chicken producers. Median incomes are also higher for chicken farmers, while at the bottom end, the lowest 20% are slightly lower than all farms, but comparable to the U.S. average. Chicken farmer incomes have a wider range than all farms and all households, but this is almost entirely due to the significantly higher level of the top 20% of chicken farmer incomes.

The graph below shows the results for these three income categories.

⁸MacDonald, James. "Technology, Organization, and Financial Performance in U.S. Broiler Production." USDA. Economic Information Bulletin Number 126. June 2014. Found at *Technology, Organization, and Financial Performance in U.S. Broiler Production* (https://www.ers.usda.gov/webdocs/publications/43869/48159_eib126.pdf?v=5006.2) (usda.gov). Accessed 2/1/2022.



As this is only 1 year of data the results need to be viewed with some caution. Farm incomes, especially for farms not selling on contracts, can vary widely from year to year. Still, the results do tell a story about the relative returns of live chicken production. At the top end and on average, well-run chicken farms tend to earn significantly more than both the average U.S. farm and U.S. non-farm household.

Recent USDA data also show that over the last decade poultry farms have on average financially outperformed the average farm. From 2010 to 2021 average poultry farm net farm income was \$59,800 compared to \$38,200 for all farms.⁹ The averages cannot be directly compared to the medians reported in the MacDonald report but directionally the conclusion is the same.

Comparative Live Chicken Production Loan Performance

Available agricultural lender statistics also strongly support the USDA survey showing that live chicken production has favorable returns compared to other farming activities.

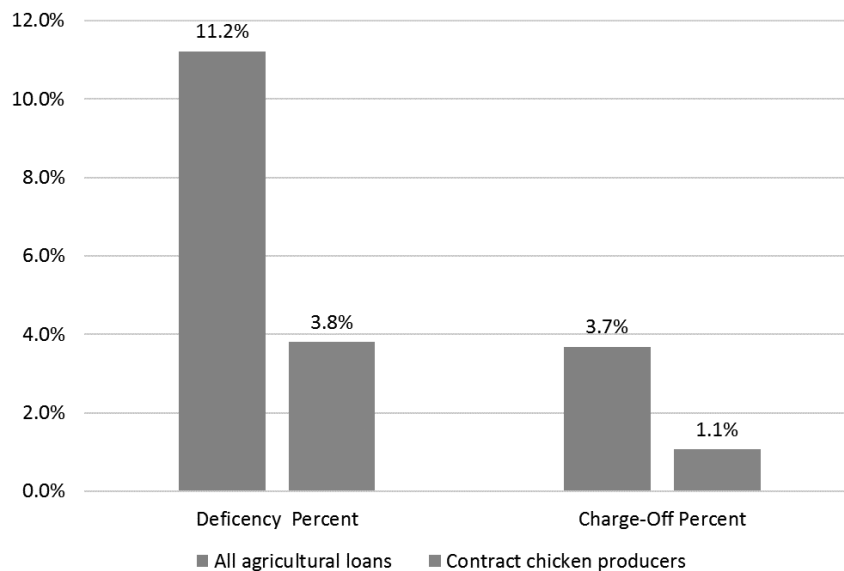
In 2015 NCC obtained loan quality data from the Small Business Administration, a significant lender to live chicken producers. The data showed significantly lower charge off and deficiency percentages for chicken producers compared to all agricultural loans.

The deficiency rate for live chicken farmers was about 1/3 the rate for all agricultural loans, and the charge-off rate was less than 30% of all agricultural loans.

These loan results also support the financial advantages of contract chicken production compared to other types of farming operations. The following graph summarizes an overview of these data.¹⁰ The vastly different chicken farmer loan results are largely due to the lower level of cost and income risks that are the result of the specific contracting arrangements between chicken farmers and their companies.

⁹USDA, *Agricultural Resource Management Survey*. Found at *USDA ERS Reports* (<https://my.data.ers.usda.gov/arms/tailored-reports>). Accessed 3/7/2022.

¹⁰Source: NCC. Data obtained from Government Loan Solutions, Inc. 9/11/2015.



Summary and Conclusions

Data from the NCC survey and evidence from third party sources all show that live chicken production is broadly and generally being run by a group of effective and experienced farmers. Chicken farmers generally have higher incomes compared to all farms and all U.S. households, and have an age structure that is similar to all farm operators. Compared to the entire U.S. labor force both chicken farmers and all farm operators tend to be older than non-farm employees. This is seen as a result of the substantial financial investment often required to enter farming.

The 2021 turnover rate of chicken farmers was 6.3%, the majority of which was voluntary or due to external factors beyond the control of companies and farmers. Responding companies also reported significant waiting lists for those who would like to enter live chicken production or expand existing operations.

An analysis of farmer payment data obtained from Agri Stats showed that inflation-corrected farmer payment rates per square foot of farmer owned housing have increased over time. The increase is due to improved bird daily weight gain performance that has increased with no significant effect on feed used per bird. Chicken companies who furnish the feeds have benefited from the feed efficiency gains. Farmers who furnish live chicken housing have captured the benefits of increased growth rates.

The current contracting system has helped promote the steady improvements in live chicken performance that have benefited chicken farmers, the companies they produce for, and ultimately consumers. Both farmers and their companies benefit from those performance gains.

A USDA farm financial survey shows that broiler producers generally have significantly higher incomes than all other farming enterprises and the average U.S. household. The lowest 20% of contract farmer incomes are only slightly less than the similar statistic for all U.S. households, but lower than bottom 20% of all farm operators.

SBA farm loan data show much lower loan deficiency and charge-off rates for live chicken production than all agricultural loans. These data support the findings of the USDA survey.

Agri Stats data show that inflation-corrected farmer income per square foot of chicken housing has benefited financially from increases in chicken growth rate performance. Higher growth rates are primarily the result of breeding investments made by chicken companies and farmer investments in their own operations that help chickens realize their improving genetic potential. Average daily gains have decreased in the last few years, but have been partially offset by higher payments per pound.

Viewed in totality, live chicken production is a viable, mutually beneficial and attractive farming enterprise for the vast majority of farm families who raise chickens in partnership with the companies they work with.

EXHIBIT 3: NCC COMMENTS TO DOCKET NO. AMS–FTPP–21–0046 POULTRY GROWING TOURNAMENT SYSTEM FAIRNESS AND RELATED CONCERNS (SEPT. 6, 2022)

September 6, 2022

Submitted electronically via [regulations.gov](https://www.regulations.gov)

BRUCE SUMMERS,
Administrator,
Agricultural Marketing Service,
United States Department of Agriculture
Docket Clerk,
Agricultural Marketing Service,
U.S. Department of Agriculture,
Washington, DC

Re: Docket No. AMS–FTPP–21–0046, Poultry Growing Tournament Systems: Fairness and Related Concerns

Dear Mr. Summers:

The National Chicken Council (NCC) appreciates the opportunity to provide comments on the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) advance notice of proposed rulemaking entitled, “Poultry Growing Tournament Systems: Fairness and Related Concerns” (ANPR).¹ NCC is the national, nonprofit 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 would be directly affected by changes to poultry grower contracting, including those contemplated in the ANPR.

As explained in more detail in these comments, NCC strongly opposes further rulemaking by AMS regarding the current poultry grower contracting system. In addition, we incorporate by reference our comments filed on August 23, 2022, to docket No. AMS–FTPP–21–0044 regarding AMS’s Transparency in Poultry Grower Contracting and Tournaments Proposed Rule.² NCC is deeply concerned that changes to, or elimination of, the tournament system would have a devastating financial impact on the U.S. chicken industry by raising costs, contributing to increased food prices for consumers, and ultimately destabilizing a successful compensation system. NCC urges AMS to refrain from further steps that would undermine a successful compensation system.

I. The Current Poultry Grower Contracting System Is a Well-Designed, Efficient Structure That Benefits Growers, Dealers, and Consumers

NCC supports the current poultry grower compensation system and champions it as a structure that fairly rewards family farmers for efficient use of resources and innovation in raising high-quality birds. The current system’s fair, honest contracts provide a target pay that high-performing growers can supplement with the efficient use of resources. This system promotes superior results that lower chicken-raising costs, encourage efficient use of resources, and benefit growers, live poultry dealers (“dealers”), and consumers.

To briefly describe the performance structure, dealers deliver broiler chicks to growers on the day the chicks hatch. Growers raise the chicks into broilers using feed, veterinary care, and other consultants like animal welfare experts that are provided by the dealer. Growers are responsible for providing quality housing, farm maintenance, on-farm inputs, and day-to-day care of the broilers.

In a typical grow-out contract, growers and dealers agree on a pre-determined target price per pound of weight gain based on an average. The specifics vary, but growers are usually either paid the target plus a bonus for high performance, or grower payments are adjusted slightly upward or downward from the target based on relative performance. Overall, regardless of the approach taken, growers earn a predictable payment plus the opportunity to earn a bonus for strong performance. This approach rewards skilled growers who have honed their management practices to most efficiently raise healthy birds.

¹87 Fed. Reg. 34814 (June 8, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-06-08/pdf/2022-11998.pdf>.

²NCC Comments to Docket No. AMS–FTPP–21–0044, Comment ID AMS–FTPP–21–0044–0487 (Aug. 23, 2022), <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0487>.

The tournament system's incentive-based pay structure rewards grower efficiency and innovation and promotes bird welfare.

The current poultry grower compensation system operates like any arrangement between a business and a service provider, where a service provider competes with others to provide the best services as efficiently as possible to increase the provider's net compensation and where businesses compete to secure the best service providers at profitable rates. Growers are provided the same quality resources—broilers, feed, access to veterinary care and consulting—and use their farming skills to produce high-quality birds at the lowest cost. This rewards-based system allows dealers to incentivize efficient use of resources, innovation in management practices, and grower investments in housing and care.

Growers not only take seriously their responsibility to ethically raise their birds, but, through the current compensation system, they also have every business incentive to ensure their birds are well-cared for. Properly cared-for birds experience optimal growth rates and have lower mortality, both of which increase a grower's pay. This contract structure allows the well-being of birds to be a dealer's and grower's top priority because incentives are given to farmers who raise the healthiest, highest-quality birds. Similarly, dealers have every incentive to make sure their growers succeed and produce healthy, quality birds. If a dealer sees a flock struggling or identifies opportunities to increase efficiency, the dealer will provide the grower with assistance through technical experts that are familiar with the breed, business, and growing conditions to help the grower maximize his or her potential.

This process results in a highly efficient market and contributes to the global cost-competitiveness of U.S. chicken meat. Chicken meat is a wholesome, nutritious lean protein that has never been more affordable in the U.S., both on a real-dollar basis and when viewed against a typical household's overall buying power. This is despite the immense inflationary pressures facing consumers and businesses from all directions.

The tournament system efficiently allocates risk to the parties best equipped to handle it.

The current poultry grower contracting system has evolved to efficiently allocate economic risk to the parties best prepared to burden it. In fact, data show that chicken companies remove approximately 97 percent of the economic risk from growers as compared to independent growers.³ Dealers supply growers with a variety of necessary inputs, including broiler chicks, feed, medication and veterinary care, technical advice, and other resources. This removes much of the economic risk from factors like shifting feed prices and market uncertainty from contract growers to dealers, whereas independent growers would shoulder the entirety of that risk themselves. If feed prices skyrocket during a contract term, or weather or disease affect mortality rates among all growers, the contracted-for grower base payments would not change.

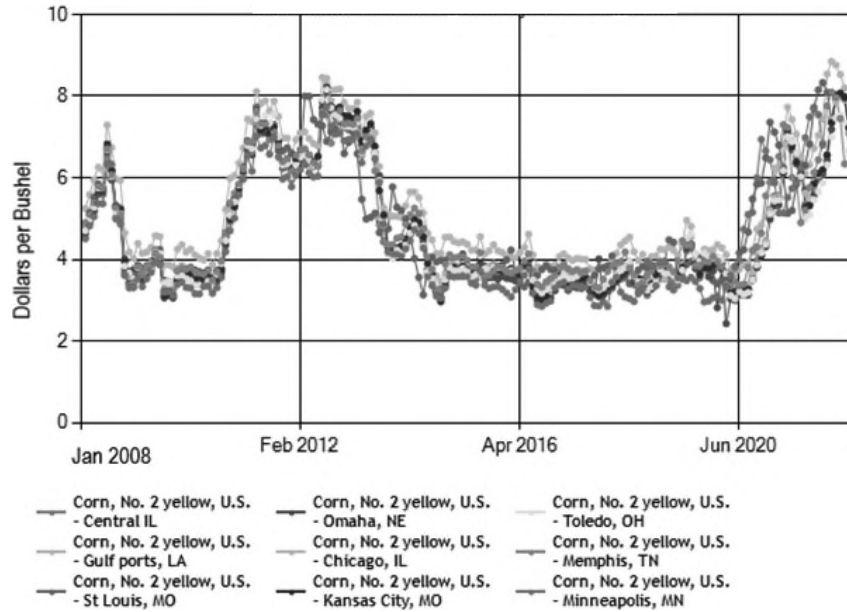
Many of the capital-intensive inputs listed above benefit from large-scale purchasing. For example, broiler chicks themselves are expensive inputs, given the advanced genetics and breeding management required to produce them. Dealers operate at scale and are best equipped to manage the complicated chick supply chain, including hatcheries and grandparent flocks of sufficient size and scale to supply all their farms. It would be impossible for an individual farmer to source chicks with anywhere near the same consistency and efficiency as dealers. The contract structure also protects buyers from needing to find a market for the birds once fully raised. The contract terms remain in effect for the duration of the agreement, regardless of whether demand for chicken meat plummets and affects a dealer's profits. A grower will always get paid for the birds he or she raises and does not have to face the risk of investing heavily in a flock only to have the market crater when it comes time to harvest those birds.

Another major input dealers supply that presents significant risks is feed. Feed is typically the greatest input cost in raising chickens. Dealers secure or produce feed at significant scale and volume, and they do so with their specific bird breeds or customer specifications in mind. In particular, a major ingredient in chicken feed is corn, which regularly experiences significant price fluctuations, depicted in *Figure 1* below. These price fluctuations result from government policies like Renewable Fuel Standard mandates, competing end-users, geopolitical events, and droughts and other major weather events. These price fluctuations could be catastrophic for individual farmers if they had to secure feed on the open market. But under the current system, dealers have the scale and resources, including access to sophisti-

³C.R. Knoeber & W.N. Thurman, "Don't Count Your Chickens . . .": Risk and Risk Shifting in the Broiler Industry, 77 AM. J. AGRICULTURAL ECON. 486, 496 (1995).

cated hedging strategies, to secure feed at favorable prices and they are better positioned to absorb unexpected increased feed costs. Grow-out contracts are agnostic to feed prices, and the grower is insulated from these potentially devastating input risks.

Figure 1, U.S. Corn Market Prices, January 2008–July 2022 ⁴



Similarly, dealers are best equipped to secure medication and veterinary care for the chickens. Rather than requiring each grower to retain a veterinarian, schedule veterinary visits, and obtain medication, dealers coordinate veterinary care to ensure birds are well cared for. Alleviating growers from arranging veterinary care also ensures that a grower’s economic incentive is aligned with protecting bird health. Whereas an independent grower might have an economic incentive to pay for veterinary services only when it is absolutely clear that care is necessary, contract growers have every incentive to reach for veterinary services whenever they might be needed, better protecting bird health overall. Additionally, because a dealer’s veterinarians cover many growers, they are able to work at a more efficient scale and are extremely familiar with the type of birds they are caring for.

This arrangement removes the overwhelming majority of the economic risk that growers would otherwise face, allowing contract growers to dedicate consistent attention and resources to providing high quality care, land, and housing for their birds. This partnership dynamic promotes the economic vitality and independence of family farms by promoting stable and predictable income. As described in more detail in Section II, the benefits of this partnership structure were highlighted during the industry’s successes during the COVID-19 pandemic, where the industry maintained steady profits for growers even in serious economic uncertainty and supply chain disruptions.

The American poultry industry is the most competitive in the world in significant part because the poultry grower compensation system encourages innovation and investment in the best equipment and practices. NCC is proud to represent an industry that consistently and continuously produces affordable protein, even in times of soaring across-the-board inflation and economic distress that increase prices for consumers.

⁴ *Feed Grains Database*, USDA Economic Research Service (accessed September 1, 2022), <https://www.ers.usda.gov/data-products/feed-grains-database/>.

II. Data Show the Current Poultry Grower Contracting System Is Profitable and Works Well for Growers

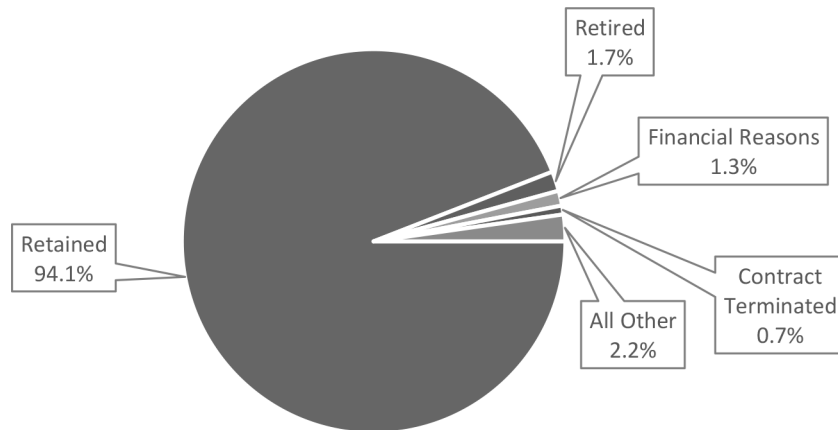
NCC commissioned an independent study, published earlier this year by Dr. Tom Elam, that captures live chicken production statistics from 2021 and summarizes key trends in broiler production efficiency, returns, and loan quality data (the “Elam Study”, attached as *Appendix A*).⁵ The study incorporates the most recent publicly-available government data and analyzes the results of a recent survey of chicken growing contracts. The survey results indicate that current poultry grower contracting relationships are mutually beneficial, successful, and profitable for both growers and dealers.

Despite having options to work with different dealers, most growers have been with their current dealer for over 5 years.

Most growers are in a position to choose between partnering with two or more processors and can readily cut ties with a bad business partner. Over 50 percent of growers have been with their current dealer for 10 years or more, a statistic unchanged from 2015, with an additional 20 percent (for a total of 70 percent) having been with their current dealer for over 5 years.⁶ A majority of the contracts considered in the study were for 5 years or less, and $\frac{1}{3}$ were for flock-to-flock arrangements. This shows that most growers, when presented with the opportunity to stay with their dealer or to test the market, find it better to stay with their dealer and renew their agreement.

In addition, only 6.3 percent of the study respondents’ farmers left their company in 2021, a statistic that includes retiring growers.⁷ A grower may part ways with his or her dealer for a variety of reasons, including retirement, financial distress, and declining health. Of the 6.3 percent of grower departures, only 0.7 percent was from growers leaving the industry due to contract termination by the dealer.⁸ These data show that growers and dealers both willingly continue doing business after their initial contracts end and that exceedingly few growers see their contracts terminated, further showing the current partnership contracting system is mutually beneficial.

Figure 2, Reasons for Farmer Departures, 2021⁹



The features of the tournament system allow chicken growers to earn a profitable wage.

The Elam Study found that USDA data showed, in 2011, the \$68,455 median income for chicken farmers was significantly higher than the median income of both U.S. farm households and U.S. households (not restricted to farm households). Sixty

* **Editor’s note:** the report entitled *Live Chicken Production Trends* was attached as *Appendix A* to the previous comment letter submitted as *Exhibit 2*. See page 107.

⁵T. Elam, *Live Chicken Production Trends*, FarmEcon, LLC (Mar. 2022), <https://www.nationalchickencouncil.org/wp-content/uploads/2022/03/Live-Chicken-Production-FARM-ECON-LLC-2022-revision-FINAL.pdf> [hereinafter “Elam Study”].

⁶*Id.* at 3.

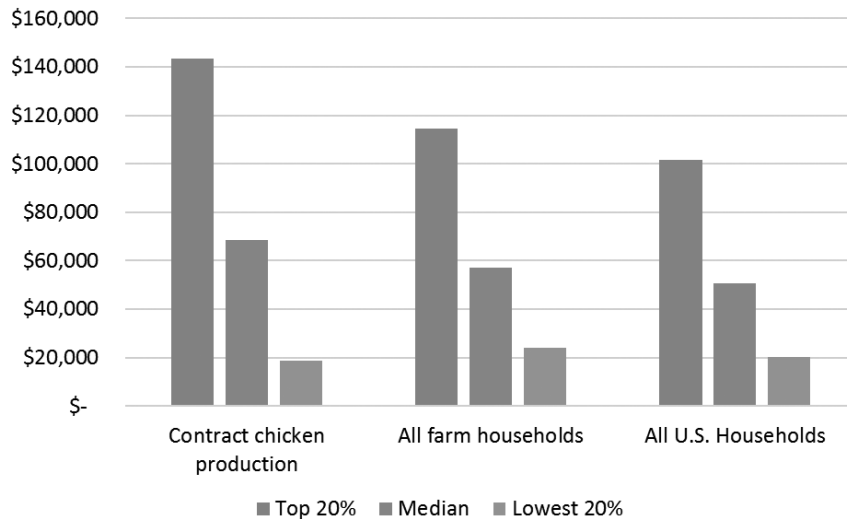
⁷*Id.* at 5.

⁸*Id.* A dealer may terminate a contract for various reasons, but most often the reason is tied to poor bird performance or failure to adhere to contract standards.

⁹*Id.*

U.S. farm households and U.S. households (not restricted to farm households). Sixty percent of U.S. chicken farmer household incomes exceeded the U.S.-wide median.¹⁰ In addition, the top 20 percent of contract chicken farmers earn on average \$142,000, significantly higher than the top 20 percent of all farm households (\$118,000) and the top 20 percent of all U.S. households (\$101,000), according to the same data.¹¹ Although USDA has not since updated the study reporting this data, there is every reason to believe that these trends have continued. For example, a different USDA dataset showed that, from 2010–2021, average poultry farm net farm income was \$59,800, compared to \$38,200 for all farms.¹²

Figure 3, Income Variations Between Contract Chicken Production, All Farm Households, and All U.S. Households, 2011¹³



The tournament system's features benefit the health and well-being of chickens.

In 2021, the average on-farm livability of a flock of U.S. broiler chickens was almost 95 percent, compared to only 82 percent in 1925.¹⁴ This improvement in production practices is driven in large part by directly incentivizing growers to properly care for their birds.

Interest in entering the broiler growing industry remains high, showing that the industry can not only retain its current farmers but that there is room to grow.

The Elam Study's findings show interest in entering the broiler growing industry remains high. Companies responding to the survey reported significant waiting lists for entrepreneurs seeking to enter live chicken production or current farmers looking for opportunities to expand their operations. There were 1,672 applications from potential growers and 335 expansion requests from existing farmers.¹⁵ These applications indicate a steady interest in entering contract chicken production and excitement about entering an industry with a reputation for profitable arrangements.

Default rates on loans for poultry growers and dealers are low.

As depicted in *Figure 4*, the Elam Study found that the deficiency percent and charge-off percent for poultry grower loans amount to merely $\frac{1}{3}$ of the average agricultural loan, based on Small Business Administration loan quality data.¹⁶ The data

¹⁰*Id.* at 9.

¹¹*Id.* at 10.

¹²*Id.* This study used different data and is not directly comparable to the figures in the study reporting the 2011 income, although the same trend bears out—chicken farming generates more income than the average farming operation.

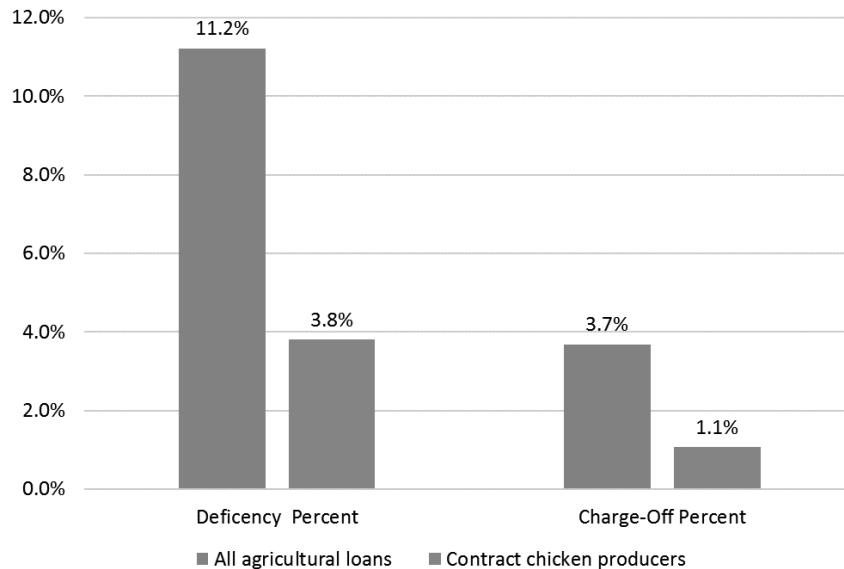
¹³*Id.* (referencing 2011 data from a USDA financial survey as analyzed by J. MacDonald, *Technology, Organization, and Financial Performance in U.S. Broiler Production*, USDA Economic Information Bulletin Number 126 (June 2014)).

¹⁴*Id.* at 6.

¹⁵*Id.* at 4.

cultural loan, based on Small Business Administration loan quality data.¹⁶ The data overwhelmingly show that growers and their lenders can effectively and accurately evaluate expected income from poultry growing arrangements. Moreover, these data show growers can earn steady incomes from their growing arrangements that allow them to adequately service their debt obligations, directly dispelling any allegations that growers are somehow saddled with unsustainable debt loads.

Figure 4, Default Rates for Contract Chicken Producers and All Agricultural Loans, 2015¹⁷



III. AMS's Changes to Poultry Grower Contracting Contemplated in the ANPR Suggest Fundamental Changes That Would Hobble Poultry Producers and Dismantle the Current Successful Compensation System

NCC is gravely concerned that the policy proposals telegraphed in the ANPR would impose substantial costs on the broiler industry and would undermine the functioning of the very successful grower compensation system. At a time when input costs are soaring and inflation continues to be a top concern for American households, AMS should avoid imposing regulatory burdens that would increase costs for producers and add costs to consumers, and under no circumstances should AMS destroy a highly successful economic structure. We highlight the following overall concerns and general comments regarding AMS's requests for comments in the ANPR:

- AMS poses questions in the ANPR that presuppose the current poultry grower contracting system is unfair or problematic. AMS appears to have made up its mind without even considering comments, and NCC urges AMS to take an unbiased approach to its rulemaking, especially considering the impression presented in the ANPR is far from accurate. Tellingly, no court has ruled that the current grower compensation system violates Section 202(a) of the Packers and Stockyards Act, nor has AMS taken enforcement action on this basis despite the tournament system being in use for decades.
- Several of AMS's questions for comment in the ANPR appear to reflect ideas from earlier 2010 and 2015 rulemakings (75 *Fed. Reg.* 35338 (June 22, 2010); 81 *Fed. Reg.* 92723 (Dec. 20, 2016)) that were clearly rejected by Congress.¹⁸ As multiple economic impact studies submitted to those dockets reflect, those

¹⁶ *Id.* at 11.

¹⁷ *Id.* at 11.

¹⁸ See Consolidated and Further Continuing Appropriations Act, 2015, H.R. 83, 113th Cong. § 731 (2014); Consolidated Appropriations Act, 2014, H.R. 3547, 113th Cong. § 744 (2014); Consolidated and Further Continuing Appropriations Act, 2013, H.R. 933, 113th Cong. §§ 742–43

As multiple economic impact studies submitted to those dockets reflect, those proposals would have imposed costs on the industry in excess of \$1 billion (numbers that, due to inflation, would be significantly higher in 2022). Those proposals were misguided and costly when introduced and remain so today. To the extent AMS seeks to incorporate ideas from those previous rulemakings into future regulatory action, NCC urges the agency to account for these independent economic analyses and inflation when evaluating the costs on the industry and consumers.

- Existing market practices address or prevent many of the purported concerns AMS raises. Dealers have every economic and business incentive to promote the optimal growth of birds and maintain productive relationships with their growers. Because chicken processing plants are expensive and only provide sufficient return on investment if they operate at full capacity, dealers are further incentivized to maintain good reputations as a good business partner in order to attract new growers to their operation and maintain a consistent processing schedule. Processors that gain a reputation as bad business partners, including by attempts to manipulate a grower's performance or otherwise drive away growers, would quickly see their plants under-supplied and their grower pool taken by competitors. Lenders serve as an additional check on dealer business practices. Because many growers are financed by experienced lenders, lenders are intimately involved in scrutinizing the revenue expected under a growing arrangement, and they have a sophisticated understanding of the industry. Growers presented with unsustainable contracts would not be able to secure financing, which in turn would mean dealers would not have anyone to raise their birds. This provides a natural market force to reinforce the existing economic incentives toward fair and sustainable contracts.
- AMS appears to be to be overly concerned with contract termination. As explained in detail in Section I, dealers have every incentive to help growers raise high quality birds and meet their expectations under the contract. If there is a concern about growers meeting their contracted-for standards, dealers work with the growers and technical experts to address the issue and identify areas of improvement. In reality, and as explained above, less than one percent of contracts are terminated each year. These terminations are most often for animal welfare violations and failure to raise the birds properly.
- AMS should avoid any changes that eliminate the current system's ability to reward the top-performing growers. Eliminating performance-based pay would eliminate any incentive for a grower to put in the hard work and make the necessary investments to raise high-quality flocks. This would harm efficiency, jeopardize bird welfare, make it harder for top performers to stay in the poultry growing business, and ultimately affect consumer prices. The current compensation system structure is an efficient and an effective means of rewarding the best growers for performing above average and incentivizing less-efficient growers to improve their performance.

IV. AMS Should Address All Amendments to PSA Regulations in One Rule-making Otherwise, All Changes Required of Industry Should Have a Single Implementation Date

We urge the agency to propose and implement all planned amendments to PSA regulations in a single rulemaking, or, if this is not possible, provide a single implementation date. NCC is concerned that AMS is taking a piecemeal approach to promulgating regulations for industries regulated by the PSA. This ANPR and the proposed rule issued on the same day as the ANPR signal AMS intends to propose a line of planned changes affecting the poultry industry. Imposing constant regulatory changes on industry would only foster confusion, increase unnecessary costs, and impress uncertainty in an already uncertain economic environment. Implementing changes in a single rulemaking would allow industry to see the true cost of the proposed changes and allow AMS to be transparent with industry about the direction it plans to take. Even if AMS chooses to implement regulations in a piecemeal fashion, it should implement a uniform effective date for all changes to PSA regulations currently identified in the Unified Agenda, including "Clarification of Scope of the Packers and Stockyards Act (AMS-FTPP-21-0046)" (RIN 0581-AE04) and "Unfair

(2013); Consolidated and Further Continuing Appropriations Act, 2012, H.R. 2112, 112th Cong. § 721 (2011).

Practices in Violation of the Packers and Stockyards Act (AMS–FTPP–21–0045)” (RIN 0581–AE05).

* * * * *

NCC appreciates the opportunity to comment on the ANPR. Please feel free to contact us with any questions. Thank you for your consideration.

Respectfully submitted,



MIKE BROWN,
President,
National Chicken Council.

EXHIBIT 4: NCC COMMENTS TO DOCKET NO. AMS–FTPP–21–0045 INCLUSIVE COMPETITION AND MARKET INTEGRITY UNDER THE PSA PROPOSED RULE (JAN. 17, 2023)

January 17, 2023

Submitted electronically via regulations.gov

BRUCE SUMMERS,
Administrator,
Agricultural Marketing Service,
United States Department of Agriculture

RE: Comments on Inclusive Competition and Market Integrity Under the Packers and Stockyards Act, 87 Fed. Reg. 60010 (Oct. 3, 2022), Docket No. AMS–FTPP–21–0045

Dear Mr. Summers:

The National Chicken Council (NCC) appreciates the opportunity to comment on the proposed rule, “Inclusive Competition and Market Integrity Under the Packers and Stockyards Act” published in the Federal Register on October 3, 2022, (the “Proposed Rule”) by the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (“AMS” or the “agency”). NCC represents vertically integrated companies that produce and process more than 95 percent of the chicken marketed in the United States. Our members would be directly affected by the proposed regulations.

The Proposed Rule would fundamentally alter and constrain the poultry production market to the detriment of growers, consumers, and processors alike. The Proposed Rule suffers numerous legal infirmities and would have devastating effects on the poultry contracting process, resulting in increased costs to our members making it more difficult to fairly reward their contract farmers. For the numerous reasons discussed in these comments, we urge AMS to withdraw the Proposed Rule. To the extent AMS believes a rulemaking remains necessary, we urge AMS to promulgate a single rulemaking addressing all proposed changes to livestock and poultry contracting in one consolidated process.

Executive Summary

NCC urges AMS to withdraw the Proposed Rule because it is legally unsound, unworkable for industry, and poses costs that will inflict irreparable damage to the U.S. economy. The Proposed Rule exceeds AMS’s statutory mandate by proposing a rule by which violations would seemingly not require a showing of injury to competition, an essential component of all violations of Section 202 of the Packers and Stockyards Act (PSA). The Proposed Rule further fails to pass constitutional muster because of the litany of vague and undefined terms used throughout that fail to clearly define what conduct is prohibited. The Proposed Rule likewise falls short of Administrative Procedure Act (APA) requirements because it is based on an inadequate administrative record. Moreover, each provision of the Proposed Rule suffers fatal flaws making the proposal fundamentally unworkable. We highlight specific concerns below, noting in particular the failure to define and protect reasonable business conduct and the broad and subjective definition of “market vulnerable individual.” Finally, AMS drastically underestimates the cost of the Proposed Rule overlooking the heavy costs of recordkeeping, contract revisions, and associated labor and technology, much less the substantial litigation costs that would be necessary to define the contours of the Proposed rule. For the many reasons discussed below, AMS should withdraw the Proposed Rule. If AMS continues to believe the proposal is necessary, it should conduct a single rulemaking addressing all proposed changes to livestock and poultry contracting.

I. The Proposed Rule Is Legally Deficient

The Proposed Rule is legally deficient because it would prohibit conduct without regard to injury or likely injury to competition, is unconstitutionally vague, exceeds AMS's statutory mandate, and is not supported by the administrative record.

A. *The Proposed Rule would prohibit conduct without regard to injury to competition*

Well established caselaw—universal among the many circuit courts of appeal to have considered the issue—holds that establishing a violation of Section 202 of the PSA requires showing injury or likely injury to competition. As recently as 2 years ago, AMS tacitly recognized this as well.¹ AMS suggests throughout the preamble, however, that it could enforce the Proposed Rule without showing competitive injury.² Meanwhile, the plain text of the Proposed Rule is silent on the requirement. As a matter of law, all violations of Sections 202(a) and (b) of the PSA require a showing of injury, or the likelihood of injury, to competition. The Proposed Rule ignores this requirement and attempts to reach much more broadly. As such, it would exceed AMS's statutory authority.

1. The agency lacks statutory authority to promulgate any regulation that permits a finding of a violation of Sections 202(a) or (b) of the PSA without a showing of injury to competition

When Congress passed the PSA, it specifically intended to prohibit practices that harmed the competitive process. The language that it used in the statute was understood at the time of enactment to address those practices that were collusive or monopolistic (or monopsonistic) and had a substantial likelihood of reducing output and ultimately raising prices to consumers. Congress incorporated terminology from other regulatory statutes—most notably, the Interstate Commerce Act (ICA) and the Federal Trade Commission Act (FTCA)—that were plainly designed to protect the competitive process for the benefit of the consuming public. The competitive injury requirement, therefore, is not some judicial gloss on Section 202(a)–(b) but an integral part of the statutory scheme. By importing language from other enactments with well-established legal meaning, Congress necessarily “adopt[ed] the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use convey[ed].”³ Accordingly, it is the statutory language itself that imposes the requirement of competitive injury. Indeed, there is no other reasonable reading of the statute. The agency has no authority to promulgate any regulation that is broader than, or conflicts with, the underlying statutory provision on which it is based.⁴ Because Sections 202(a) and (b) of the PSA mandate a showing of competitive injury, AMS has no power to read out that statutory element through its rulemaking authority.

The PSA is at its foundation an antitrust law. There is no dispute that the purpose of Section 202 of the PSA is the elimination of monopolistic or other anti-competitive practices—that is, to protect competition for the benefit of consumers. Only a year after the Act's passage, the Supreme Court in *Stafford v. Wallace* recognized that the “chief evil” that Section 202 sought to address was “the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper, who sells, and unduly and arbitrarily to increase the price to the consumer, who

¹ Most recently, AMS recognized “a question” of competitive injury in its 2020 rulemaking addressing criteria for identifying violations of the PSA. 85 *Fed. Reg.* 79779, 79790 (Dec. 11, 2020) (“Whether competitive injury is required to establish a violation of the Act is a broader question applicable to the full provisions of sections 202(a) and 202(b). . . .”).

² For example, AMS references protecting individual producers without addressing the corresponding need to show a broader injury or likelihood of injury to competition:

The proposed prohibitions would protect producers at both individual and market-wide levels from undue prejudices and disadvantages and unjust discrimination—both of which AMS has determined violate the PSA. The Secretary is empowered under the PSA to address harms in their incipency.

87 *Fed. Reg.* 60017. AMS cites *Bowman v. USDA*, to support the above proposition, quoting “the Act is designed to ‘prevent potential injury by stopping *unlawful* practices in their incipency. Proof of a particular injury is not required.’” 363 F.2d 81, 85 (5th Cir. 1966) (emphasis added). AMS ignores however that the concerns it identifies do not in fact violate the PSA without showing a likelihood of competitive injury. If an action, including one its incipency, does not present a likelihood of injury to competition, it is not unlawful under the PSA.

³ *Morrisette v. United States*, 342 U.S. 246, 263 (1952).

⁴ *Morrison v. National Australia Bank, Ltd.*, 130 S. Ct. 2869, 2881 (2010) (regulation promulgated under a statute “does not extend beyond conduct encompassed by [the statute’s] prohibition”) (quoting *United States v. O’Hagan*, 521 U.S. 642, 651 (1997)); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 214 (1975) (“scope [of a rule] cannot exceed the power granted the [agency] by Congress under [the relevant statute]”).

buys.”⁵ “Another evil,” according to the Court, was “exorbitant charges, duplication of commissions, deceptive practices in respect of prices, in the passage of the live stock through the stockyards, *all made possible by collusion between the stockyards management and the commission men, on the one hand, and the packers and dealers, on the other.*”⁶

The common thread linking the statutory purposes identified by the Supreme Court is the elimination of anticompetitive practices. First, as the *Stafford* Court noted, Congress sought to prohibit the abuse “unduly and arbitrarily” of monopsony power by packers that leads to a monopolistic restriction of output with the effect of “arbitrarily” increasing the price of products purchased by consumers. Second, Congress intended to prevent “exorbitant charges” and other anticompetitive practices resulting from collusion among market participants. As the Court noted, because of that collusion, “[e]xpenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper, and *increase the price to be paid by the consumer.*”⁷ In other words, every aim of Section 202 identified in *Stafford* manifests an intent to protect the competitive process for the benefit of consumers.

Nothing in *Stafford* or in the language of the statute suggests that Congress intended the Act to protect individual market participants from the stringency of competition. Rather, market participants are protected from conduct that itself would have the effect of harming competition and consumer interests. In identifying the aims of Section 202, *Stafford* explicitly connects any protection of producers to the protection of consumers. The Court explained that Congress sought to remove “undue burden[s] on . . . commerce”⁸ and “unjust obstruction[s] to . . . commerce”⁹ flowing from any “unjust or deceptive practice or combination,” confirming that Congress enacted the PSA to maximize market output for the benefit of consumers.

Courts have long recognized that the PSA is rooted in antitrust law.¹⁰ Antitrust law exists to protect the competitive process so that consumers may obtain the highest quality goods and services at the lowest possible cost.¹¹ In the absence of some likely consumer harm, “[e]ven an act of pure malice by one business competitor against another does not, without more, state a claim under the Federal antitrust laws.”¹² In short, the Sherman Act and other antitrust statutes have not been construed to protect producers from the rigors of competition or to strike against aggressively competitive practices. Instead, these laws aim to enhance consumer welfare by ensuring that markets operate efficiently and that products are produced and priced competitively. *Stafford* makes clear that the goals of the PSA are identical.¹³

⁵ *Stafford v. Wallace*, 258 U.S. 495, 514–15 (1922) (emphasis added).

⁶ *Id.* (emphasis added).

⁷ *Stafford*, 258 U.S. at 515.

⁸ *Id.*

⁹ *Id.*

¹⁰ *De Jong Packing Co. v. United States Dep’t of Agric.*, 618 F.2d 1329, 1335 n. 7 (9th Cir.), cert. denied, 449 U.S. 1061 (1980) (PSA “incorporates the basic antitrust blueprint of the Sherman Act and other pre-existing antitrust legislation”); *Armour & Co. v. United States*, 402 F.2d 712, 722 (7th Cir. 1968) (“Congress gave the Secretary no mandate to ignore the general outline of long-time antitrust policy by condemning practices which are neither deceptive nor injurious to competition nor intended to be so by the party charged.”).

¹¹ See, e.g., *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 225 (1993) (the antitrust laws protect “competition, not competitors”) (emphasis in original) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962)); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1979) (“Congress designed the Sherman Act as a ‘consumer welfare prescription’”) (quoting R. Bork, *The Antitrust Paradox* 66 (1978)); *Sanderson v. Culligan Int’l Co.*, 415 F.3d 620, 623 (7th Cir. 2005) (“The antitrust laws protect consumers, not producers. They favor competition of all kinds, whether or not some other producer thinks the competition ‘fair.’”); *Freeman v. San Diego Ass’n of Realtors*, 322 F.3d 1133, 1154 (9th Cir. 2003) (“Inefficiency is precisely what the market aims to weed out. The Sherman Act, to put it bluntly, contemplates some roadkill on the turnpike to Efficiencyville.”); *Chicago Prof’l Sports Ltd. P’ship v. National Basketball Ass’n*, 95 F.3d 593, 597 (7th Cir. 1996) (“The core question in antitrust is output. Unless a contract reduces output in some market, to the detriment of consumers, there is no antitrust problem.”).

¹² *Brooke Group*, 509 U.S. at 225.

¹³ The PSA may be broader than some antitrust provisions in that it prohibits acts that are likely to have a detrimental effect on competition rather than only those having an actual anticompetitive effect. See, e.g., *De Jong*, 618 F.2d at 1335 n. 7 (“the courts that have considered § 202 have consistently looked to decisions under the Sherman Act for guidance, although recognizing that § 202 in some cases proscribes practices which the Sherman Act would permit”); *Armour & Co.*, 412 F.2d at 722 (“While Section 202(a) of the Packers and Stockyards Act may be broader than antecedent antitrust legislation found in the Sherman Act, Clayton Act, FTCA and ICA, there is no showing that there was any intent to give the Secretary of Agriculture complete and unbridled discretion to regulate the operations of packers.”). The point remains,

2. Every appellate court to have considered the issue has held Section 202 of the PSA requires a showing of competitive injury

In light of *Stafford*, every appellate court to have construed Section 202 of the PSA has held that no violation of subsections (a) or (b) occurs without a showing of competitive injury. Eight different circuits have addressed the issue, and they have uniformly and resoundingly affirmed this understanding.¹⁴ In several of these cases, the agency argued its position directly to the court in question;¹⁵ in others, it filed *amicus briefs* urging the court to adopt its preferred construction.¹⁶

The Sixth Circuit thoroughly summed up the judicial landscape in its 2010 *Terry* decision. The court concluded that, while the question of “whether a plaintiff asserting unfair discriminatory practices or undue preferences under §§ 202(a) and (b) of the PSA must allege an adverse effect on competition to state a claim” was new to the Sixth Circuit, other courts had addressed the question:

This issue is not novel to other courts; it has been addressed by seven of our sister circuits, with consonant results. All of these courts of appeals unanimously agree that an anticompetitive effect is necessary for an actionable claim under subsections (a) and (b). For the reasons that follow, we join this legion.¹⁷

In surveying court precedent, the Sixth Circuit noted the “prevailing tide” of circuit court decisions holding “that subsections (a) and (b) of § 192 [PSA § 202] require an anticompetitive effect,” after which it concluded:

The tide has now become a tidal wave, with the recent issuance of the Fifth Circuit Court of Appeals’ *en banc* decision in *Wheeler v. Pilgrim’s Pride Corp.*, 591 F.3d 355 (5th Cir. 2009) (en banc), in which that court joined the ranks of all other Federal appellate courts that have addressed this precise issue when it held that “the purpose of the Packers and Stockyards Act of 1921 is to protect competition and, therefore, only those practices that will likely affect competition adversely violate the Act.” *Wheeler*, 591 F.3d at 357. All told, seven circuits—the Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits—have now weighed in on this issue, with unanimous results.¹⁸

Tellingly, USDA participated in the *Terry* appeal as an *amicus curiae* and advanced the position that a showing of injury is not required for a Section 202(a) or (b) violation. The court expressly recognized USDA’s involvement, noted USDA’s argument that the court should read Section 202(a) and (b) to not require a showing of injury to competition, and pointedly concluded, “We decline to do so.”¹⁹

The agency offers no analysis undermining any of these court decisions, nor could it. The agency has participated in some capacity, either as a party or an *amicus*, in six of the ten appellate cases holding that competitive injury is an element of a Section 202 violation. In light of this record of litigation futility, AMS is not free to ignore the prevailing judicial authority or seek to undo it through the rulemaking process.

3. When the PSA was enacted, the language of Sections 202(a) and (b) was understood to proscribe conduct that harmed competition

AMS blindly ignores the competitive injury requirement in Section 202, instead implying the language of the section is malleable and open to interpretation. Rather than base this argument on any legal authority, AMS dredges up contemporaneous dictionary definitions of the terms and then seeks to impress them on the statute’s

however, that Section 202 does not permit either the agency or a private plaintiff to dispense with some showing of competitive injury—actual or likely—to prove a violation.

¹⁴*Terry v. Tyson Farms, Inc.*, 604 F.3d 272, 276–79 (6th Cir. 2010); *Wheeler v. Pilgrim’s Pride Corp.*, 591 F.3d 355 (5th Cir. 2009) (*en banc*); *Been v. O.K. Indus., Inc.*, 495 F.3d 1217, 1230 (10th Cir. 2007); *Pickett v. Tyson Fresh Meats, Inc.*, 420 F.3d 1272, 1280 (11th Cir. 2005), *cert. denied*, 547 U.S. 1040 (2006); *London v. Fieldale Farms Corp.*, 410 F.3d 1295, 1303 (11th Cir.), *cert. denied*, 546 U.S. 1034 (2005); *IBP, Inc. v. Glickman*, 187 F.3d 974, 977 (8th Cir. 1999); *Philson v. Goldsboro Milling Co.*, 1998 WL 709324 at *4–5 (4th Cir., Oct. 5, 1998); *Jackson v. Swift Eckrich, Inc.*, 53 F.3d 1452, 1458 (8th Cir. 1995); *Farrow v. United States Dep’t of Agric.*, 760 F.2d 211, 215 (8th Cir. 1985); *De Jong*, 618 F.2d at 1336–37; *Pac. Trading Co. v. Wilson & Co.*, 547 F.2d 367, 369–70 (7th Cir. 1976); *see also Armour & Co.*, 402 F.2d 712.

¹⁵*IBP*, 187 F.3d 974; *Farrow*, 760 F.2d 211; *De Jong*, 618 F.2d 1329; *Armour & Co.*, 402 F.2d 712.

¹⁶*Terry*, 604 F.3d 272; *Wheeler*, 591 F.3d 355.

¹⁷*Terry*, 604 F.3d at 276.

¹⁸*Id.* at 277 (lengthy string citation of supporting cases omitted).

¹⁹*Id.* at 278.

language.²⁰ The agency cites no authority for this proposed form of statutory construction, which borders on frivolous. In exercising its rulemaking authority, AMS must follow the canons of statutory interpretation. It is neither “free to pour a vintage that [it] think[s] better suits present-day tastes”²¹ nor otherwise permitted to construe a statute in a linguistic vacuum. The APA does not sanction such “make-it-up-as-the-agency-goes-a-long” exercises of regulatory power.

The relevant provisions of the Act prohibit “unfair,” “unjustly discriminatory,” and “deceptive” practices and devices, as well as “undue” or “unreasonable” preferences and advantages and “undue” or “unreasonable” prejudices and disadvantages. All of these terms had established statutory and common-law antecedents that were well-known to Members of Congress when the statute was enacted. Read in legal context, these terms concern only business conduct that has an actual or likely adverse effect on competition.²² Therefore, the interpretation given by the courts to Sections 202(a) and (b) is not merely the best reading but rather is the only permissible reading of the statute.

The language of Sections 202(a) and (b) is lifted almost verbatim from provisions of the ICA and the FTCA.²³ By the time of the PSA’s passage in 1921, these statutes had been addressed a number of times by the Supreme Court. There was no question at the time that the aims of those laws were to preserve or restore competition and prevent monopolistic practices either generally, in the case of the FTCA, or in specific economic sectors, in the case of the ICA.²⁴ The language used in those enactments was understood to effectuate those Congressional goals.

Words used in a statute that “have acquired a specialized meaning in the legal context must be accorded their *legal* meaning.”²⁵ When Congress transports phrases from one statute to another, there is a strong presumption that adoption of such terminology “carries with it the previous judicial interpretations of the wording.”²⁶ Moreover, Congress “presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed.”²⁷ “[I]f a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings its soil with it.”²⁸ Here, nothing in Sections 202(a) and (b) of the PSA suggests that Congress intended the words used in those provisions to have a meaning different from the meaning given them in other statutes.²⁹ Rather, Congress used terms of art to describe the unlawful practices prohibited by Sections 202(a) and (b). The “plain language” rule requires that those terms of art be given their commonly understood meaning at the time of the PSA’s passage. Accordingly, the statutory language itself requires that either the agency or a private plaintiff prove a competitive injury to show a violation of Sections 202(a) and (b).

4. The structure of Section 202 of the PSA mandates a competitive injury requirement

The existence of a competitive injury requirement is also manifest from the structure of the statute. Sections 202(a) and (b) do not ban all forms of economic discrimination, preference, or advantage. Rather, they prohibit only those that are “unjust,” “undue,” “unfair” or “unreasonable.” Therefore, there must be some forms of discrimination, preference or advantage that are legitimate and some that are not. Both the courts and the agency must have an objective standard by which to distin-

²⁰ 87 *Fed. Reg.* 60015–16.

²¹ *United States v. Sisson*, 399 U.S. 267, 297 (1970).

²² *Wheeler*, 591 F.3d at 364 (Jones, J., concurring). The term “unreasonable,” for example, had a clear antitrust meaning by the time of the passage of the PSA. The Supreme Court had used that terminology to distinguish between those business practices that unlawfully restrained competition from those that were permissible under the Sherman Act. *See, e.g., Chicago Bd. of Trade v. United States*, 246 U.S. 231 (1918); *Standard Oil Co. v. United States*, 221 U.S. 1 (1911).

²³ 81 *Fed. Reg.* at 92570.

²⁴ *See generally Wheeler*, 591 F.3d at 365–70 (Jones, J. concurring) (collecting cases).

²⁵ *Buckhannon Bd. & Care Home, Inc. v. West Va. Dep’t of Health & Human Resources*, 532 U.S. 598, 615 (2001) (emphasis in original).

²⁶ *Carolene Prods. Co. v. United States*, 323 U.S. 18, 26 (1944).

²⁷ *Morissette*, 342 U.S. at 263.

²⁸ *Moskal v. United States*, 498 U.S. 103, 121 (1990) (quoting F. Frankfurter, *Some Reflections on the Reading of Statutes*, 47 *Colum. L.R.* 527, 537 (1947)).

²⁹ Although resort to the legislative history of the PSA is unnecessary for a proper construction of Sections 202(a) and (b), that legislative history also confirms that Congress understood the terms used in the statute to address anticompetitive conduct. *See* H.R. Rep. No. 67–77, at 2–10 (1921) (detailed discussion of Supreme Court cases construing the language of the ICA and the FTCA).

guish lawful conduct from unlawful conduct. The explicit requirement of competitive injury in other subsections of Sections 202 demonstrate precisely what Congress intended that objective standard to be. When examined in context, the only reasonable conclusion that can be drawn is that Sections 202(a) and (b) are intended to be catch-all provisions that sweep up anticompetitive practices not otherwise prohibited by the more narrowly drawn subsections of the statute.³⁰ Otherwise, Sections 202(a) and (b) would prohibit activities specifically exempted from the other Section 202 subsections, depriving those sections of any meaning and rendering them null, contrary to the canons of interpretation.

Without the competitive injury requirement, there is no objective standard by which courts, or the agency, can separate prohibited practices from lawful ones. Cut loose from their moorings in competition law, the terms “discrimination,” “preference” and “advantage” would have broad meanings that extend well beyond the economic realm. Yet, even AMS has not suggested that the PSA applies to non-commercial practices. The agency’s own understanding of the statute, therefore, confirms that Congress intended the PSA to be economic legislation governing commercial relationships. Once that fact is recognized, it follows that the terms “unfair,” “unjust,” “undue” and “unreasonable” must also have economic content. The only way to give those terms such content is to apply a clear set of objective economic principles that allow a court or agency to ferret out those practices that are harmful—that is, “unfair,” “unjust,” “undue,” or “unreasonable”—from those that are efficient and beneficial to competition overall based on the legal definitions of these terms when the PSA was adopted. The competitive injury requirement, in turn, is the only way to do so consistent with the structure and purposes of Section 202.

Any other interpretation would make it virtually impossible for a business subject to the PSA to order its affairs rationally to comply with Section 202(a) or (b). What is “unfair,” “unjust,” “undue,” or “unreasonable” would depend solely on what an agency adjudicator or, in civil litigation, a judge or jury decided that it meant in any particular case. To exercise that function, the agency or court would have to make value judgments, choosing one set of priorities over another without any guidance from the statutory text or any other source about which value or set of values is to be preferred in any particular case. Such an approach raises significant constitutional issues, but in any event, there is no need to address those matters because nothing in the statutory text suggests Congress intended to empower the agency or the courts to make such standardless value judgments.³¹

In sum, the plain language of Section 202 of the PSA, its aims, and its structure reveal that Congress intended that the practices banned by subsections (a) and (b) be those that harm competition in some fashion. That conclusion has been unanimously confirmed by every appellate court to address the issue. Therefore, the competitive injury requirement is not merely some gloss on an allegedly ambiguous provision but an integral and permanent statutory command.

5. Any effort to omit the PSA’s competitive injury requirement exceeds AMS’s statutory mandate and raises a major question requiring Congressional direction

Congress has not authorized AMS to forego the competitive injury requirement of Section 202. The Proposed Rule ultimately stems from rulemaking driven by the 2008 Farm Bill.³² The 2008 Farm Bill granted no authority to AMS to promulgate a rule that excuses the competitive injury requirement of Section 202(a) or (b). Section 11006 of the 2008 Farm Bill stated in pertinent part that the “Secretary of Agriculture shall promulgate regulations with respect to the Packers and Stockyards Act, 1921 (7 U.S.C. § 181 *et seq.*) to establish criteria that the Secretary will consider in determining whether an undue or unreasonable preference or advantage has occurred in violation of such Act.”³³ The farm bill, therefore, authorized only a rule setting forth *criteria* that the agency would use in determining whether a violation of Section 202(b) of the PSA has occurred. It did not authorize AMS to alter, abrogate, or ignore the fundamental elements of the statute.

Not only did the plain language of the 2008 Farm Bill make that clear, but the legislative record unmistakably demonstrates that Congress authorized no radical alteration of Sections 202(a) or (b). The original draft of the 2008 Farm Bill proposed by Senator Harkin contained an express provision eliminating the competitive injury requirement under Sections 202(a) and (b). Congress removed that language

³⁰ *Wheeler*, 591 F.3d at 371 (Jones, J., concurring).

³¹ *Id.* at 365 (Jones, J., concurring) (PSA “certainly did not delegate any such free value-choosing role to the courts”) (quoting R. Bork, *The Antitrust Paradox* 53 (1993 ed.)).

³² Pub. L. 100-246.

³³ *Id.* § 11006(1).

from the final enactment. Accordingly, the 2008 Farm Bill did not authorize AMS to forego the competitive injury element of Section 202 violations.

When AMS's predecessor agency charged with PSA implementation, the Grain Inspection, Packer and Stockyards Administration (GIPSA), nonetheless tried to read into the 2008 Farm Bill a mandate to circumvent the injury to competition requirement, Congress reacted swiftly and clearly by preventing GIPSA from finalizing an overly broad rulemaking for several years.³⁴ Moreover, the 2014 and 2018 Farm Bills did not renew the call for criteria, nor did they make any reference to GIPSA's 2010 rulemaking that had started—and then had been halted by Congress—in response to the 2008 Farm Bill. And they certainly did not indicate Congress supported attempts to read the injury to competition requirement out of the PSA. Had Congress intended for the agency to reinterpret Sections 202(a) and (b), Congress readily could have clarified as much in the 2014 or 2018 Farm Bill, especially in light of the considerable controversy caused by GIPSA's 2010 proposed rule. Instead, the 2014 and 2018 Farm Bills were silent on the topic, suggesting, if anything, that Congress felt it was time to move on from the issue raised in that rulemaking. When GIPSA ultimately promulgated an appropriately tailored rulemaking, resulting in 9 CFR § 201.211, Congress did not object.

Given this clear direction from Congress, AMS's attempt to read the injury to competition requirement out of the PSA and to effectively expand the PSA into a general anti-discrimination law raises a major question requiring Congressional direction. As such, AMS may not expand its regulatory framework to change or undermine the current application of Sections 202(a) and (b). As recently stated by the Supreme Court in *West Virginia v. EPA*, in certain cases of “economic and political significance,” an agency must demonstrate “clear Congressional authorization” to exercise its powers.³⁵ The PSA is a hundred-year-old law, and at no point in its history has it been applied to broadly address the type of conduct encompassed in the Proposed Rule or to prohibit conduct that does not result in an injury or the likelihood of injury to competition. Congress knows what the PSA does and does not do, and only Congress may expand the law's reach to cover new conduct. Through the present series of rulemakings, of which this Proposed Rule is a part, AMS seeks to completely upend animal production contracting in the livestock and poultry industry. These sectors account for more than \$1 trillion of annual economic impact and touch all fifty states, and they would be drastically affected by a change in the injury to competition requirement. Any attempt to rewrite by regulation the PSA's injury to competition requirement is the very definition of an issue of “economic and political significance.” AMS cannot take it upon itself to dramatically expand the scope of such a longstanding statute.

B. The Proposed Rule is unconstitutionally vague

A regulation having the force of law must give persons and entities subject to it fair notice of what is prohibited so that they may comply with it. Several portions of the Proposed Rule fail this basic constitutional test. Under the due process clause of the Fifth Amendment, a rule of law must define a legal violation “with sufficient definiteness that ordinary people can understand what conduct is prohibited and . . . in a manner that does not encourage arbitrary and discriminatory enforcement.”³⁶ Any legal rule failing to meet that standard is “void for vagueness.” While the vagueness doctrine is most often employed in criminal cases, it has also been applied in cases in which a party faced civil sanctions as well.³⁷

The Supreme Court has applied the void-for-vagueness doctrine to strike down economic regulations that are remarkably similar to the Proposed Rule. In *Cline v. Frink Dairy Co.*,³⁸ the Court held unconstitutional under the Fourteenth Amend-

³⁴ See Consolidated and Further Continuing Appropriations Act, 2015, H.R. 83, 113th Cong. § 731 (2014); Consolidated Appropriations Act, 2014, H.R. 3547, 113th Cong. § 744 (2014); Consolidated and Further Continuing Appropriations Act, 2013, H.R. 933, 113th Cong. §§ 742–43 (2013); Consolidated and Further Continuing Appropriations Act, 2012, H.R. 2112, 112th Cong. § 721 (2011).

³⁵ 142 S. Ct. 2587, 2613–14 (2022) (explaining that in certain cases of “economic and political significance,” an agency must demonstrate “clear Congressional authorization” to exercise its powers); see also *Nat'l Fed'n of Ind. Business v. OSHA*, 142 S. Ct. 661 (2022) (*per curiam*) (rejecting the Occupational Safety and Health Administration's claims of regulatory authority regarding emergency temporary standards imposing COVID-19 vaccination and testing requirements on a large portion of the national workforce); *Ala. Ass'n of Realtors v. HHS*, 141 S. Ct. 2485 (2021) (*per curiam*) (rejecting the Centers for Disease Control and Prevention's claims of regulatory authority regarding a nationwide eviction moratorium).

³⁶ *Skilling v. United States*, 130 S. Ct. 2896, 2927–28 (2010).

³⁷ *Gentile v. State Bar*, 501 U.S. 1030, 1048–50 (1991) (invalidating state bar disciplinary rule under the void-for-vagueness doctrine).

³⁸ 274 U.S. 445, 453–65 (1927).

ment Due Process Clause a Colorado antitrust statute prohibiting certain business combinations except those that were necessary to obtain a “reasonable profit.” Similarly, in *United States v. L. Cohen Grocery Co.*,³⁹ the Court held unconstitutional Section 4 of the Lever Act, which made unlawful any “unjust or unreasonable rate or charge” for “necessities.” And in *International Harvester Co. v. Kentucky*,⁴⁰ the Court concluded that a Kentucky antitrust statute proscribing the fixing of prices at levels “greater or less than the real value of the article” was unconstitutionally vague. The fatal flaw in each law was the indeterminate liability standard imposed. None of the statutes proscribed any specific conduct but rather made illegality turn on “elements . . . [that] are uncertain both in nature and degree of effect to the acutest commercial mind.”⁴¹

The Proposed Rule includes many vaguely or even undefined terms, but failure to comply with those terms would result in a regulatory violation. For example, “market vulnerable individual” would be defined so broadly as to include potentially anyone. It is unclear how to determine whether a contract is “generally or ordinarily offered,” when “differential contract performance or enforcement” would be considered to have occurred, or what it means to “inhibit market access,” “take an adverse action,” or use a “pretext.” The Proposed Rule would prohibit conduct that is deemed to be a “prejudice or disadvantage” or “retaliation,”⁴² but the proposal provides only examples, not definitive lists or definitions, making it impossible for a company to know whether any given conduct would be allowed under the regulation. Because these provisions purport to identify conduct that would be violative or specific records that would need to be kept to demonstrate compliance, they must be spelled out in a definite manner so that regulated entities can understand how to comply with the Proposed Rule. The proposal would likewise prohibit “pretexts” without elaborating on what is a pretext and what is a legitimate explanation, or even how “legitimacy” might be determined.⁴³ The proposal would impose a strict record-keeping requirement without specifying what records must be kept or, again, what conduct would even trigger the recordkeeping requirements.⁴⁴

These criteria provide virtually no guidance on when conduct would be unlawful. Rather, an act could be determined to be unlawful under the Proposed Rule only *after* some event has occurred. A poultry dealer or other entity subject to Sections 202(a) and (b) acting in utmost good faith and ordering its affairs in the most rational fashion in an effort to comply with the Proposed Rule could not reasonably anticipate, much less determine with any reasonable degree of certainty, what business practices would ultimately be held illegal under these and other provisions. The Proposed Rule, therefore, cannot withstand constitutional scrutiny. It must be withdrawn.

C. An insufficient administrative record fails to support the Proposed Rule

The Proposed Rule is a solution in search of a problem, as evidenced by an insufficient administrative record. Perpetuating a fatal flaw that has plagued rulemaking on this topic for thirteen years, AMS fails to identify any actual harmful conduct requiring this regulation. Yet it would impose substantial cost and administrative burden on the entire poultry production industry with no tangible benefit.

The preamble to the Proposed Rule is littered with vague allusions to potentially violative conduct and generalized complaints lacking sufficient detail for meaningful evaluation. AMS has certainly shown no systemic or endemic problem in poultry contracting requiring such an extreme intervention to correct. The agency’s rationale repeatedly falls back on broad conclusory statements or incomplete market analysis. For example, in describing the perceived need for market vulnerable individual provisions, AMS can state only that certain groups “arguably” are exposed to risk of abuse and that “undoubtedly” the type of discrimination contemplated in the Proposed Rule exists “in some form today,” without citing a single actual example of this occurring.⁴⁵ More broadly, the entire rulemaking seems to simply presume there are widespread “market abuses observed in the sector today” without actually identifying any instances in which this particular set of regulations would be needed.⁴⁶

The preamble is heavy on economic theory and light on actual facts to support the rulemaking. Stripped to its essence, the factual administrative record to support

³⁹ 255 U.S. 81 (1921).

⁴⁰ 234 U.S. 216 (1914).

⁴¹ *Id.* at 223.

⁴² Proposed §§ 201.304(a)(2), 201.304(b)(3).

⁴³ Proposed § 201.306(b)–(d).

⁴⁴ Proposed § 201.304(c)(2).

⁴⁵ 87 *Fed. Reg.* at 60013.

⁴⁶ *Id.*

this rulemaking consists of references to unspecified allegations of unfair treatment by producers, a highly selected set of court cases, and similar past rulemakings that never came to fruition. None of these are sufficient to establish the need for such an untenable set of regulations. The preamble is rife with vague references of “concerns” that have been “reported to USDA” but never acted on.⁴⁷ AMS provides no details about these purported complaints, including what specifically they alleged happened, when they were lodged, whether they were substantiated, how AMS investigated or responded to them, what conclusions AMS reached, or even how many AMS has received. The long history of rulemaking on this topic has been peppered with allusions to thinly described complaints, but never has AMS provided any real detail. If the unspecified “concerns . . . reported to USDA” reflected PSA violations, why did USDA not investigate them and take enforcement action under the statute? Tellingly, AMS’s response to this question in the preamble is essentially that AMS did not think it had statutory authority to do so. At the least, USDA might have developed a factual record to inform policy decisions. Instead, it appears USDA was content to simply assume these vague allegations were true. Moreover, many of these vague allegations seem to have come from a 2010 listening session,⁴⁸ and some even earlier.⁴⁹ They are long out of date and have never been verified or subjected to the searching scrutiny warranted to support Federal rulemaking. Unsubstantiated complaints lodged in 2010 and 2004 cannot meaningfully support a 2022 rulemaking under vastly different economic conditions.

The only concrete examples of alleged PSA violations in the entire proposal come in the form of selected court cases. However, many of these cases do not actually stand for the proposition for which they are cited, and they appear to have been opportunistically selected and used.

For example, AMS cites *Swift & Co. v. United States*⁵⁰ for the proposition that “price discrimination in favor of a larger grocery store chain, and higher prices to its competitors, are another type of unjust discrimination that the Act has prevented.”⁵¹ However, AMS neglects to mention that in *Swift*, a prerequisite of the holding was a finding that there was substantial evidence of injury to competition.⁵² Similarly, AMS’s reliance on *Denver Union Stock Yard Co.* is misplaced because in that case, the Supreme Court specifically addressed the discrimination at issue in the context of marketplace harm, explaining that “[a]s written [the PSA] is aimed at all monopoly practices.”⁵³ AMS cites to the *Terry* decision described above to support AMS’s position that discriminatory or retaliatory acts by packers or integrators intended to prevent transfer of rents negatively affects efficiency, but in *Terry*, the Sixth Circuit actually held there was no PSA violation because the plaintiff could not point to a competitive injury.⁵⁴ AMS similarly misconstrues the *James* case. AMS describes the *James* case as standing for the proposition that “fifty-four poultry growers sued the integrator for retaliatory actions and were awarded \$10 million in damages as a result.”⁵⁵ But in fact, in *James*, the Supreme Court of Oklahoma reviewed evidentiary proceedings from the trial that AMS referenced, *overturned the verdict*, and granted defendants a new trial citing concerns with the conduct of the trial.⁵⁶ Similarly, AMS cites *Philson v. Cold Creek Farms, Inc.* for the proposition that skipping placements and terminating contracts with turkey growers allegedly in retaliation for growers voicing complaints about the integrator.⁵⁷ Yet *Philson* was a ruling on the defendants’ motion for summary judgment and thus focused on the sufficiency of the factual record. Importantly, in denying defendants’ motion to dismiss with respect to alleged PSA violations, the court noted *Stafford’s* emphasis that the PSA was fundamentally focused on preventing monopolistic practices and concluded that “[c]onsequently, only those unfair, discriminatory or deceptive practices adversely affecting competition are prohibited by the Act.”⁵⁸ The *Philson* court expressly rooted its denial of the defendants’ motion in findings that triable issues of

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 60013 n. 32.

⁵⁰ 317 F.2d 53, 55–56 (7th Cir. 1963).

⁵¹ 87 Fed. Reg. at 60016.

⁵² 317 F.2d at 55.

⁵³ *Denver Union Stock Yard Co. v. Producers Livestock Mktg.*, 356 U.S. 282, 289–90 (1958).

⁵⁴ *Terry v. Tyson Farms, Inc.*, 604 F.3d 272 (6th Cir. 2010).

⁵⁵ 87 Fed. Reg. at 60026.

⁵⁶ *James v. Tyson Foods, Inc.*, 292 P.3d 10, 18–19 (Okla., 2012).

⁵⁷ 87 Fed. Reg. at 60028.

⁵⁸ *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197, 200–02 (E.D.N.C. 1996).

fact remained as to whether the complained-of conduct caused injury to competition.⁵⁹

But even if one were to overlook the actual holdings of these cases and take AMS's explanations at face value, these cases suggest that actual serious PSA violations are rare—AMS cites only a handful of cases over more than half a century—and that when they do occur, the PSA provides USDA or harmed individuals with ample statutory authority to pursue them. If anything, these cases show that the current regulatory approach is working. They certainly do not support additional, burdensome rulemaking. Likewise, poultry growing contracts are also subject to state contract and tort law, and one would expect extensive state-law litigation if integrators were engaging in abusive contracting practices. That has not happened, again reinforcing that the purported evils AMS is trying to address simply do not exist.

Finally, AMS recounts some of USDA's past PSA rulemaking efforts, seeming to imply that because USDA decided to initiate rulemaking in the past, there must a problem that requires solving. But a Federal agency cannot simply conjure a problem into existence by saying it tried to address that problem in the past, nor does the fact that rulemaking occurred legitimize that administrative record. As discussed above, Congress specifically objected to many aspects of those past rulemakings, and the rules were withdrawn.

In short, nothing in the record indicates there is pervasive, or even occasional, discrimination, retaliation, or deception of the type raised in the Proposed Rule, much less that a burdensome series of contracting restrictions, compliance hoops to jump through, and recordkeeping obligations is justified to address it. This flawed administrative record renders the Proposed Rule arbitrary and capricious under the APA.⁶⁰

II. The Proposed Rule Is Fundamentally Flawed and Unworkable

The Proposed Rule would do much harm and little if any good for anyone involved. It suffers from several critical overarching flaws, as well as flaws specific to each provision.

A. *The Proposed Rule fails to expressly protect and define reasonable business conduct*

First, the regulatory text of the Proposed Rule fails to address legitimate or reasonable business decisions. The reality of business dealings means that in many cases two parties will be treated differently simply because of economic conditions or business realities. One grower might be offered a contract whereas another was not simply because of processing plant capacity. One might be offered an opportunity to raise birds to different specifications because that grower has established a track record of successfully innovating her husbandry practices. A grower might have a contract terminated because the grower mistreated birds. Although all of these are reasonable and appropriate business justifications for differential treatment, on the surface, they could also appear to violate the Proposed Rule. It is essential that regulated entities be able to make these and other reasonable business decisions with confidence they will not later face liability under the Proposed Rule.

Although AMS recognizes in the preamble its intent to “leav[e] room for differential treatment based on legitimate business purposes,”⁶¹ that protection is not clearly enshrined in the regulatory text itself. Specifically, the Proposed Rule fails to recognize that differential treatment based on a reasonable business decision does not violate proposed Sections 201.304 or 201.306, regardless of any other factors. Although AMS references “legitimate” business decisions, a more appropriate approach would be to create a safe harbor for “reasonable” business decisions. Courts and agencies are well versed in applying reasonableness standards, whereas “legitimacy” implies value judgments that are far more difficult and, in any event, inappropriate for evaluating business decisions. Focusing on “reasonable business decisions” would also better harmonize the Proposed Rule with existing 9 CFR § 201.211, creating better consistency across AMS's PSA regulations.

Moreover, AMS fails to identify how a company would be expected to demonstrate that an action was based on a reasonable business decision. Without clear direction, regulated entities would be forever exposed to the risk of AMS deciding after the

⁵⁹ *E.g., id.* at 201–02 (“In addition, a genuine issue of material fact remains as to whether [Defendant’s] method of computing ‘head sold’ was injurious to competition and unfair, discriminatory or deceptive.”).

⁶⁰ 5 U.S.C. § 706(2)(A).

⁶¹ 87 *Fed. Reg.* at 60016.

fact that the company lacked sufficient documentation to demonstrate its decision was appropriate.

Equally as important, the emphasis must be on demonstrating the existence of a reasonable business decision, as opposed to lack of existence of any other explanation. Business decisions must be presumed to be reasonable unless proven otherwise. Business relationships, especially long-term ones, can be complicated.

Examples of complicated fact patterns abound. Consider, for instance, a poor performing grower who is unsatisfied with his pay and initiates a dispute with an integrator and who then grossly mismanages a flock and creates serious bird welfare issues. The integrator might reasonably decide to terminate the contract with that grower based on mistreatment of the birds, regardless of any other considerations, and it should be enough for the integrator to demonstrate that basis for the adverse action.

Or consider a grower who is signed to a 1 year contract to make up grow-out capacity after part of a large multi-house farm is destroyed by a fire. After the year-long contract is up, the larger farm is once again operational, the additional grow-out capacity is no longer needed, and the integrator elects not to renew the grower's contract. If the temporary grower is a market vulnerable individual, how would the integrator demonstrate the non-renewal was for appropriate reasons? Or consider the same example, but several temporary growers were brought on board for the year, some of whom were market vulnerable individuals and some of whom were not, and due to demand increase, the integrator decides to convert some of these temporary growers to longer-term growers by renewing their contracts. How is the integrator to evaluate the growers and justify its decisions? Would it have to prioritize renewing contracts with the market vulnerable individuals?

The Proposed Rule fails to provide any guidance on how a regulated entity could document its business decisions in these and many other complicated scenarios.

B. Issues with proposed Section 201.302—Market Vulnerable Individual

AMS proposes an extremely broad and subjective definition of “market vulnerable individual.” Under the proposed definition, nearly anyone could be a market vulnerable individual in one way or another. Individuals are multifaceted and could be considered members of dozens, if not hundreds, of groups. So long as a person might be identified with even one “group” whose members are at a “heightened risk” of “adverse treatment,” the person qualifies as a market vulnerable individual. This extremely broad definition would in effect require a company to assume every grower is a market vulnerable individual. This in turn would create tremendous administrative burden and stifle the free market contracting that has helped make chicken production so efficient for consumers and so rewarding for growers.

The proposal overlooks the extremely complex nature of individual identities. In reality, nearly everybody could identify an aspect of his or her personhood that could be associated with a group whose members are at heightened risk of adverse treatment. The proposed definition goes well beyond concepts of protected classes familiar under Equal Protection Clause law and instead encompass every facet of a person's appearance, mannerisms, attitudes, actions, beliefs, affiliations, lineage, and so on. Any individual is almost certainly a member of a group that puts the individual at heightened risk of adverse treatment as well as a group that makes favorable treatment more likely. The traits that make one a market vulnerable individual might vary by community or might change over time. An individual's associations with different groups might change over time as well; if a person was once part of a group but no longer is, would that person still be considered a market vulnerable individual? It is impossible to fully disentangle the complex nature of individuals, but AMS's proposal would reduce all business decisions to an exercise of identifying every way in which an individual might face a disadvantage and then requiring the integrator to prove that no such disadvantage occurred, in every single interaction with every single grower.⁶²

In fact, read plainly, the proposal would lead to absurd results, with market vulnerable individual protection extending to many people who ought not receive protection. For example, individuals convicted of animal cruelty offenses would almost certainly be part of a group (known animal abusers) who are heightened risk of adverse treatment in animal production contracting (no integrator would want to en-

⁶² Notably, the Proposed Rule also appears to overlook definitions used in other USDA programs that appear to have similar goals, providing no analysis of how its proposed definition would differ or be similar to those or whether it considered basing its approach on other programs' definitions instead. *See, e.g.*, 7 U.S.C. 2003(e)(1) (defining “socially disadvantaged groups” of farmers or ranchers for USDA target participation rates in certain regulatory programs as groups “whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities”).

trust its birds to a known animal abuser), yet AMS's proposal would appear to protect them as market vulnerable individuals. Ironically, as proposed, if an integrator perceives a grower to be an animal abuser (a group whose members are at heightened risk of adverse treatment in poultry contracting), and that grower in fact abuses chickens, it might be impossible for the integrator to terminate the grower's contract due to the abuse because the contract termination would be an adverse action against someone the integrator perceives to be a market vulnerable individual on account of that person being a market vulnerable individual.

Many other unsavory traits could also trigger market vulnerable individual protection, with the ironic and unfortunate result that AMS's proposal could actually make it more difficult to refuse dealings with or to take adverse action against such people. Surely AMS does not intend such absurd outcomes, but the overly broad and nebulous concept of a market vulnerable individual all but invites such problems and the accompanying legal expenses to resolve them.

The Proposed Rule could lead to situations that are less absurd but just as difficult. Consider an integrator is approached by someone who wants to raise chickens but who does not speak English. This person presumably would be a market vulnerable individual. But none of the integrator's farm service technicians speak the prospective grower's language, and it would be impossible for them to effectively communicate with the grower and ensure the grower is able to raise birds to the integrator's standards. If the integrator declines to sign a contract with this prospective grower for this reason, the proposal would appear to treat that as an adverse action based on the individual's perceived status as a market vulnerable individual, yet doing business would seem to be impossible in this situation.

Moreover, under the proposal, it is entirely unclear how to determine whether a regulated entity "perceives someone to be a market vulnerable individual. For example, which employee's perception is relevant—the employee who interacts with the grower, the employee who approves the contract, the employee who makes placement decisions, or any of the many other employees likely involved in managing the grow-out process? What if one employee perceives the grower to be a market vulnerable individual, but another does not? What if three employees are jointly involved in a decision with respect to a grower, and one perceives the grower to be a market vulnerable individual while the other two do not? What if an employee incorrectly perceives an individual to be a market vulnerable individual, or perceives someone to be a market vulnerable individual for an incorrect reason? What if an employee's perception changes over time or is corrected someone else? What if a grower indicates he is not a market vulnerable individual?

The proposal also leaves it unclear how to determine what constitutes a "group," how to assess that group's "risk" of adverse treatment, and what amount of risk differential constitutes a "heightened risk," again reinforcing that virtually anyone could be a market vulnerable individual for a myriad of reasons.

The result of this proposed definition would be an avalanche of paperwork. Integrators would be forced to defensively document every interaction and business decision for every actual or prospective grower to demonstrate that individual was not treated adversely due to his or her status as a market vulnerable individual. The administrative cost and hassle would be immense and would impose substantial costs on integrators and growers. With significantly greater stakes for making a "wrong" decision, integrators would face a significant disincentive to bringing on new growers or taking any actions that could create their exposure with regards to market vulnerable individuals.

C. Issues with proposed Section 201.304(a)—Prohibited Bases

Proposed Section 201.304(a) suffers from numerous issues in addition to those mentioned above.

As discussed above, many critical terms used in this provision are vague (*e.g.*, "inhibit market access," "adverse action," "market vulnerable individual"). Without clear and concrete definitions, it is impossible to determine what conduct would violate this section and thus how to comply. The non-exhaustive list of conduct that constitutes prejudices or disadvantages makes it impossible to know in advance what is prohibited. It is likewise unclear when conduct is said to "inhibit" market access or how much "inhibition" must occur for there to be a violation. For example, someone new to farming might be considered a market vulnerable individual under the proposal because new farmers are riskier business partners than established partners. If an integrator asks someone new to farming to take modest additional steps to demonstrate her fitness as a farmer, but does not make the same request of a longtime farmer, has the integrator "inhibited market access" of a market vulnerable individual? These vague terms expose companies to arbitrary after-the-fact review and enforcement. All of the scenarios described in the sections above illustrate

the very real challenges and costs regulated entities would face in trying to determine what conduct is appropriate.

It is also unclear how one would determine whether contract terms are “less favorable,” especially when there are multiple terms involved. One farmer might prefer a short-term contract whereas another might prefer a longer-term contract. These preferences might also vary by geography. Similarly, it is unclear how to evaluate contracts where multiple terms differ. If a contract offered a higher guaranteed base rate but lower potential overall compensation because of lower bonus pay opportunities, would that be a more or less favorable term? It might depend on the individual farmer’s preferences.

It is also unclear how contracts entered into at different times, in different regions, or in different economic conditions would be compared. Regional economic issues, such as land prices, natural disaster risk, or fuel prices might require different contracting approaches even if the growers ultimately earn the same net profit, but it is unclear whether arrangements like this would be allowed under the Proposed Rule. If integrators were forced to harmonize all contracts across regions or time, it could result in windfalls for some growers or arbitrary cuts for others.

Likewise, it is nearly impossible to determine when differential contract performance or enforcement might violate the Proposed Rule. Integrators manage hundreds or thousands of grow-out contracts, and by necessity, that process requires business judgment. An integrator might reasonably excuse a one-time issue with a longtime grower who has a proven track record, whereas that same issue might need require contract action with a new grower. The same goes with deciding whether to enter, terminate, or renew a contract.

These provisions would significantly deter entering into new contracts or new grower relationships, both because the act of entering into a new contract or relationship would trigger comparisons with all other contracts, and because it would be difficult to exit a contractual relationship with a poor performing or inattentive grower. A rational integrator would be wary under the Proposed Rule about making any changes to contracts, no matter how reasonable or how beneficial it would be for a grower, out of fear that the change could force the integrator to automatically update all other contracts to avoid allegations of disparate treatment, even if the change was based on a completely rationale, case-specific issue. Likewise, the Proposed Rule imposes substantial difficulties and risk in ending a business relationship, which could create a significant disincentive to entering into new grower relationships, especially if the prospective grower is new to farming or unknown to the integrator. The proposal could have the perverse effect of making it more difficult for individuals not established in farming, many of whom may be market vulnerable individuals in one way or another, to enter the chicken farming market in the first place.

Finally, AMS does not address how to demonstrate compliance. As described above, the proposal’s vague terms and far reach would cloak nearly all grower-integrator dealings in legal jeopardy, and AMS provides no direction on how integrators could ensure they comply with these provisions.

D. Issues with proposed Section 201.304(b)—Retaliation

In addition to those issues mentioned above, we have a number of concerns with proposed Section 201.304(b).

The list of activities that constitute retaliation is not exhaustive, so there is no way to know what activities are actually prohibited. It is impossible for a regulated entity to read the regulation and understand specifically what actions it must avoid taking to comply. AMS fails to provide any rules for determining whether conduct constitutes retaliation, forcing regulated entities to guess and creating great risk of arbitrary enforcement of what is essentially a “you know it when you see it” standard.

Moreover, it is unclear how it would be established whether a live poultry dealer, and the specific employees involved in grower contracting, knew that a grower had engaged in one of the protected activities. Most of those activities are activities that a live poultry dealer would not necessarily be aware of, or that only some employees might know about. As with the above discussion about “perception” and market vulnerable individuals, the Proposed Rule provides no direction on how to determine what the company knows.

Further, the provision seems to create a presumption that all protected actions by growers are legitimate. This risks exposing live poultry dealers to strategically planned actions to trigger retaliation protections, especially by poor performing growers facing potential contract termination. This poses especially significant risks in the event a grower commits animal welfare violations.

The information sharing contemplated in proposed Sections 201.304(b)(2)(iv) and (v) provides no exception for confidential or proprietary information. The unauthorized release of confidential business information can inflict substantial and irreparable harm on businesses. Confidential and proprietary information must be governed by any contractual protections controlling its dissemination, and it cannot be considered retaliation if a company exercises its contractual rights to protect any confidential information. AMS makes no allowance for this.

It is also unclear how AMS views details related to co-op activity. For example, regardless of whether growers were to form co-ops, live poultry dealers would still need to be able to select which specific growers to contract with, to choose where to place birds, and to evaluate and approve housing and other grow-out specifications. The Proposed Rule is silent on whether exercising these basic logistical and business prerogatives could be considered retaliation.

E. Issues with proposed Section 201.304(c)—Recordkeeping

The recordkeeping provision in proposed Section 201.304(c) raises several issues in addition to those discussed above.

The proposal fails to identify specific records that would need to be kept, or what records would need to be generated to show compliance with proposed Section 201.304(a) and (b). As proposed, companies will not know which records are actually subject to the regulation's recordkeeping provision until after the fact. There is simply no way for a regulated entity to know what records AMS might consider, years after the fact, to have been "relevant to its compliance" with proposed Section 201.304. This exposes companies to arbitrary enforcement, including arbitrary allegations of record destruction.

The proposed recordkeeping provision is as broad as it is vague. Potentially every document related to grower interactions—every email, every record from a farm visit, every correspondence with farm technical support staff, and every note taken during a call or meeting could in theory be "relevant to . . . compliance" with proposed Section 201.304, triggering the proposed 5 year record-retention period. This would create an overwhelming administrative burden on regulated entities and would impose exorbitant compliance costs. AMS fails to explain why such a broad recordkeeping provision is necessary or provide specificity about what records must be kept to demonstrate compliance.

Moreover, it is inappropriate to include Board of Director materials and other corporate governance materials as routine PSA compliance records, as suggested in the Proposed Rule. These materials are not routine compliance records and would not speak to whether any particular act violated the Proposed Rule. Instead, this appears to be a transparent attempt to create executive- or Board-level liability for everyday regulatory compliance matters.

Finally, the record retention period is excessively long. Most other PSA recordkeeping provisions require retention for 2 years. Five years is needlessly long and imposes substantial administrative costs and complexity. There is simply no reason to require such voluminous records maintenance.

F. Issues with proposed Section 201.306—Deceptive Practices

In addition to those discussed above, proposed Section 201.306 raises several significant issues.

As discussed earlier, AMS does not define what a "pretext" is in this context, nor how a company would demonstrate that an explanation is not pretextual. Without knowing what would make a statement pretextual, companies may become reluctant to provide detailed explanations to growers, stifling rather than promoting clear communication. And without a clear definition, companies would have no idea how to ensure they comply or demonstrate they are in compliance after the fact. The Proposed Rule seems to invite second-guessing of a regulated entity's motives. Without knowing how to demonstrate compliance, regulated entities are at great risk of not having the necessary records to refute allegations.

In many cases, there are multiple reasons for a contract action. The proposal does not address a situation where multiple reasonable business reasons support an action and could be read as requiring that every single reason be included in an explanation to avoid an omission of material fact in violation of the Proposed Rule, even if one factor drove the decision or any one factor would have formed a sufficient basis for the action.

The proposed provisions also risk making it more difficult and more costly to terminate relationships with poorly performing growers or a grower who neglects or abuses birds. Facing the fear of making a misstep in communicating a grower's termination, regulated entities may be incentivized to keep poor-performing growers on contract to avoid costly lawsuits about pretextual explanations and whether a par-

ticular fact was material. This would drain efficiency out of the system, to the detriment of consumers.

Fundamentally, the proposed provisions will impair efficient contracting by deterring legitimate adverse actions. If each adverse action creates the risk of litigation and large liabilities, regulated entities will face disincentives to terminating dealings with poor-performing growers or engaging in discussions with new growers. This is doubly harmful for individuals wishing to enter chicken farming, as it means poor-performing growers will occupy more of the grow-out supply, and they will face a harder time getting started. This will only harm rural communities long-term as younger farmers see fewer financial opportunities in their communities.

III. The Proposed Rule Would Impose Significant Costs on Society

AMS appears to have given no thought to its economic impact analysis, drastically underestimating the costs of the Proposed Rule at every possible opportunity. To prepare for the Proposed Rule, regulated entities would need to re-assess contracts and develop communications with their growers, evaluate and implement extensive recordkeeping programs and record-retention systems, develop and implement new compliance policies, and implement an administratively complicated oversight and compliance system. These programs would require highly paid professionals and substantial attorney time. Moreover, the proposal would make contracting more difficult, and it could deter companies from entering into new grower relationships, reducing overall economic efficiency in the poultry production market, driving up consumer costs, harming processors, and harming growers. The proposal would also drive costly, frivolous litigation. In fact, owing to its vagueness, the Proposed Rule almost seems premised on the need for years of litigation to define and refine the ambiguous terms AMS has proposed. The litigation costs necessary to define the requirements in the proposal alone would amount to many millions of dollars per year, on top of the likely frivolous litigation that will be brought based on a misunderstanding of, or perhaps to take advantage of, the proposal's vagueness.

AMS predicts the Proposed Rule would impose costs of only \$504 per live poultry dealer in the first year, and costs of about half that amount in subsequent years. This simply defies belief. It seems to assume that regulated entities would devote no effort and no resources to complying with the proposal. The cost of the actual filing cabinets needed to hold the voluminous paper records that would be required by the Proposal would exceed that much, not to mention the extensive recordkeeping programs and computer systems and hardware that would be necessary to properly manage digital materials. AMS likewise completely overlooks the labor that would be necessary to comply with the proposal and dramatically understates the extent and cost of the professional services, including legal services, that would be necessary to implement the proposal. Moreover, AMS completely fails to consider the cost of the litigation that will undoubtedly result from the vague terms and unclear scope rife throughout the Proposed Rule.

AMS also fails to consider costs to growers, who as part of the same economic system would inevitably bear some of the compliance costs. New growers would face fewer opportunities for new entrants, and it would be more difficult to reward top-performing growers. Consumers, too, would suffer costs in the form of a less efficient chicken production system, leading to higher costs at the supermarket and restaurants. AMS fails to even acknowledge these costs.

In reality, the cost of compliance together with anticipated litigation will undoubtedly result in costs of over \$100 million, orders of magnitude greater than AMS predicts. By comparison, independent economic analyses of previous AMS rulemakings on similar topics have indicated economic impact costs in excess of \$1 billion,⁶³ and these were prepared 13 years ago, before unprecedented inflation. It is simply not credible for AMS to conclude the Proposed Rule would impose such paltry costs.

IV. Conclusion

NCC appreciates the opportunity to comment on the Proposed Rule. We are deeply concerned that the Proposed Rule would impose substantial costs, expose live poultry dealers to significant legal and compliance risks, and undermine the successful and mutually profitable grower contracting system. We urge AMS to withdraw the proposal. If AMS were to continue to pursue this rulemaking, it should

⁶³*Scope of Sections 202(a) and (b) of the Packers and Stockyards Act*, 81 FED. REG. 92566, 92576 (discussing cost estimates prepared by Thomas Elam and Informa Economics).

repropose this and all other similar PSA proposals together in a single consolidated rulemaking process.

Sincerely,



MIKE BROWN,
President,
National Chicken Council.

EXHIBIT 5: NCC COMMENTS TO DOCKET NO. FSIS–2022–0029 PROPOSED
SALMONELLA FRAMEWORK (DEC. 16, 2022)

December 16, 2022

Submitted electronically via regulations.gov

Docket Clerk,
Food Safety and Inspection Service,
U.S. Department of Agriculture,
Washington, DC
SANDRA ESKIN,
Deputy Under Secretary for Food Safety,
Food Safety and Inspection Service,
United States Department of Agriculture
Washington, DC

Re: Docket No. FSIS–2022–0029: Proposed Framework for Controlling *Salmonella* in Poultry

Dear Ms. Eskin:

The National Chicken Council (NCC) appreciates the opportunity to provide comments regarding the United States Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS or the Agency) Proposed Framework for controlling *Salmonella* in poultry. NCC is the national, nonprofit trade association that represents vertically integrated companies that produce and process more than 95 percent of the chicken marketed in the United States.

The Agency's Proposed *Salmonella* Framework raises several questions about numerous complex topics, including risk assessment and public health modeling, pathogenicity data, current and future laboratory testing technologies, detailed applications of highly technical Hazard Analysis and Critical Control Point (HACCP) systems, and legal and technical considerations, to name but a few. NCC member companies would be significantly impacted by the Agency's Proposed Framework, and NCC encourages the Agency to take a science-based, data-driven approach to impacting public health. However, as the Proposed Framework is not based on science, data, or the results of a risk assessment(s), it is challenging for the regulated industry to provide meaningful comments. Instead, we encourage the Agency to take a more measured approach and use robust data demonstrating true impact on public health when proposing sweeping regulatory changes.

The concerted efforts by both the broiler chicken industry and FSIS to drive down *Salmonella* rates have been enormously successful. Based off the most recent FSIS testing results,¹ *Salmonella* prevalence on young chicken carcasses is 3.1% and *Salmonella* prevalence on chicken parts is 7.1% across all broiler processing establishments. These testing results are well below the *Salmonella* performance standard for both young chicken carcasses and chicken parts. Coupled with performance standards, currently over 90% of the industry is meeting or exceeding the performance standard for both young chicken carcasses and chicken parts.² In just the past few years, FSIS has significantly tightened existing *Salmonella* standards; introduced new performance standards for chicken parts; rolled out a new, scientifically driven, modernized poultry inspection system that allows for greater testing and analysis; released detailed guidance on controlling *Salmonella* through processing controls; and approved numerous new interventions; among many other endeavors. FSIS has taken or is in the process of rolling out similar programs for other species.

¹FSIS, *Sampling Results for FSIS Regulated Products*, USDA.gov (2022), <https://www.fsis.usda.gov/science-data/sampling-program/sampling-results-fsis-regulated-products>.

²*Salmonella* Verification Testing: October 31, 2021 through October 29, 2022, FSIS (2022), <https://www.fsis.usda.gov/news-events/publications/salmonella-verification-testing-october-31-2021-through-october-29-2022>.

These actions are consistent with the science-based, data-driven actions NCC believes are beneficial to public health.

As with FSIS, food safety is a top priority for the broiler chicken industry, and we support changes in food safety regulations that are based on sound science, robust data, and are demonstrated to positively impact public health. For years the industry has implemented a multi-hurdle approach focused on the continual reduction of *Salmonella* from farm to fork—implementing robust vaccination, biosecurity, sanitation, and other effective measures.

In 1996, the CDC created FoodNet Fast to display data for select pathogens transmitted through food, including *Salmonella*.³ While the incidence of salmonellosis in humans has remained relatively unchanged since 1996, Americans eat significantly more chicken and chicken products today than in 1996. In 1996, chicken consumption in the U.S. was 69.7 pounds per person. In 2022, USDA estimates that Americans will consume 99.0 pounds of chicken per person.⁴ This reflects a 42% increase in chicken consumption over the past 26 years. Neither FoodNet Fast nor Inter-agency Food Safety Analytics Collaboration (IFSAC)⁵ takes into account consumption patterns of various food sources, including chicken. When the data from both FoodNet Fast and IFSAC are analyzed based on per-pound consumption of chicken, the rate of salmonellosis associated with chicken is shown to have decreased over the past 10+ years. This data demonstrates that the robust public-health measures implemented by FSIS and the chicken industry over the past decade have been working.

In short, FSIS's existing framework for approaching *Salmonella* control has been working, and NCC encourages FSIS to continue using the latest science and industry-Agency collaborations to drive improvements in this framework. For example, as discussed in these comments, science-based changes such as transitioning to an enumeration-based performance standard would apply new technological and scientific developments to FSIS's proven approach and would drive continued food safety improvements.

The Proposed Framework would abandon these approaches for legally infirm and technologically infeasible strategies with no clear supporting data. While NCC appreciates FSIS's interest in thinking creatively about food safety, the Proposed Framework is not the right approach. First, the Proposed Framework appears premised on legally infirm conclusions that *Salmonella* may be considered an adulterant in raw poultry and that FSIS can mandate on-farm activities. Second, the Proposed Framework is presented nearly devoid of data, and it lacks specificity as to how the Agency plans to implement and enforce the proposed changes. Additionally, there appears to be a significant misunderstanding about how the broiler industry operates, the industry's supply chain structure, and current industry practices regarding the control of *Salmonella*. As written, the Proposed Framework threatens the economic viability of the entire poultry sector and threatens negative impacts on family farmers, company employees, and consumers. The Proposed Framework would have negative impacts on both the availability of chicken and the cost of chicken to consumers of U.S. chicken around the world. Overall, the Proposed Framework appears to be moving away from long-standing HACCP-based principals that focus on identifying and controlling risk to a command and control, once-size-fits-all approach that could have significant negative public health outcomes.

These comments address overarching concerns regarding FSIS's statutory authority under the Poultry Products Inspection Act (PPIA) and the lack of supporting data presented with the Proposed Framework, provide feedback on each of the three Components, and finally address several cross-cutting issues raised in the Proposed Framework.

***Salmonella* Is Not an Adulterant Under the Poultry Products Inspection Act**

*Fundamentally, the Proposed Framework is legally infirm because **Salmonella** is not an adulterant in raw chicken under the PPIA.*

Under the PPIA, a product is adulterated if it “bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does

³FoodNet Fast, Center for Disease Control (2022), <https://wwwn.cdc.gov/foodnetfast/>.

⁴USDA, *World Agricultural Supply and Demand Estimates* (Dec. 9, 2022), <https://www.usda.gov/oce/commodity/wasde/wasde1222.pdf>.

⁵Center for Disease Control, *Interagency Food Safety Analytics Collaboration (IFSAC)*, CDC.gov (2022), <https://www.cdc.gov/foodsafety/ifsac/publications.html>.

not ordinarily render it injurious to health.”⁶ Thus, whether a pathogen renders a product adulterated depends on whether the substance is added to the product or occurs naturally in the product. For added substances, the pathogen is an adulterant only if the substance is present in quantities that “ordinarily” render the product injurious to health. As FSIS has consistently recognized, *Salmonella* is not an adulterant in raw poultry because (i) *Salmonella* is not an added substance in raw poultry and (ii) *Salmonella* is not present in levels that render chicken injurious to health because customary cooking practices destroy any *Salmonella* that may be present. FSIS has offered nothing to change this interpretation.

First, *Salmonella* is not an added substance because it occurs naturally within the chicken biome. *Salmonella* is not an avian pathogen, and it exists naturally as part of the microflora in and on chicken. *Salmonella* can exist in a chicken’s skin, muscle tissue, and gut. Peer-reviewed literature establishes that healthy, asymptomatic birds are known to carry *Salmonella*.⁷ Researchers have also identified *Salmonella* in chicken neck skin, on the outer layer of skin, on feather follicles, connective tissue, and in drumstick muscle.⁸ Moreover, literature shows correlations between *Salmonella* loads on the farm or in birds and at various processing steps, reinforcing that *Salmonella* enters the process via the chickens themselves.⁹

The fact that *Salmonella* may be present in greater expected concentrations in some parts of a chicken than others is irrelevant to this analysis, as is the fact that *Salmonella*, as with any microbe, can be spread through cross-contact during processing. The PPIA asks only whether the organism is an added substance when determining if it is an adulterant. To view all pathogens that can be somehow spread among or within products as “added substances” would read out of existence the second prong of § 453(g)(1) and is simply inconsistent with the normal meaning of the term. Moreover, courts have been clear that an “added substance” refers to a substance not otherwise present in the food and added by man.¹⁰ As established, *Salmonella* occurs naturally within chickens. *Salmonella* is not an added substance in raw poultry, and thus it is an adulterant only if it “ordinarily” renders the product injurious to health.¹¹ It does not.

Salmonella does not “ordinarily” render raw chicken injurious to health. The PPIA establishes a very high standard to support a conclusion that a naturally occurring pathogen “ordinarily” renders a raw product adulterated. First, in the PPIA, Congress created a strong presumption against viewing a naturally occurring sub-

⁶21 U.S.C. § 453(g)(1).

⁷See, e.g., Rigney, C.P., Salamone, B.P., Anandaraman, N., Rose, B.E., Umholtz, R.L., Ferris, K.E., et al. (2004). *Salmonella* serotypes in selected classes of food animal carcasses and raw ground products, January 1998 through December 2000. J. AM. VET. MED. ASSOC. 224, 524–530. doi: 10.2460/javma.2004.224.524; Nde, C.W., Mcevoy, J.M., Sherwood, J.S., and Logue, C.M. (2007). Cross contamination of turkey carcasses by *Salmonella* species during defeathering. POULT. SCI. 86, 162–167. doi: 10.1093/ps/86.1.162; Erol, I., Goncuoglu, M., Ayaz, N.D., Ellerbroek, L., Ormanci, F.S., and Kangal, O.I. (2013). Serotype distribution of *Salmonella* isolates from turkey ground meat and meat parts. BIOMED RES. INT. 2013, 281591. doi: 10.1155/2013/281591.

⁸See Rimet C.-S., Maurer J.J., Pickler L., Stabler L., Johnson K.K., Berghaus R.D., Villegas A.M., Lee M. and França M. (2019) *Salmonella* Harborage Sites in Infected Poultry That May Contribute to Contamination of Ground Meat. FRONT. SUSTAIN. FOOD SYST. 3:2. doi: 10.3389/fsufs.2019.00002.

⁹See, e.g., Berghaus, R.D., Thayer, S.G., Law, B. F., Mild, R.M., Hofacre, C.L., and Singer, R.S. 2013. Enumeration of *Salmonella* and *Campylobacter* spp. in Environmental Farm Samples and Processing Plant Carcass Rinses from Commercial Broiler Chicken Flocks. APPLIED AND ENVIRONMENTAL MICROBIOLOGY. 79: 4106–4114; Volkova V.V., Bailey R.H., Rybolt M.L., Dazogalarneau K., Hubbard S.A., Magee D., Byrd J.A., Wills R.W. 2010. Inter-relationships of *Salmonella* status of flock and grow-out environment at sequential segments in broiler production and processing. ZOOSES PUBLIC HEALTH 57: 463–475; Fluckey, W.M., Sanchez M.X., McKee S.R., Smith D., Pendleton E., Brashears M.M. 2003. Establishment of a microbiological profile for an air-chilling poultry operation in the United States. J. FOOD PROT. 66: 272–279.

¹⁰See *United States v. Coca Cola*, 241 U.S. 265 (1915); *United States v. Anderson Seafoods, Inc.* 622 F.2d 157, 160 (5th Cir. 1980).

¹¹FSIS recognized that *Salmonella* is not an added substance in its recent 2022 denial of a petition requesting *Salmonella* be declared as an adulterant, noting that “FSIS has traditionally viewed *Salmonella* as ‘naturally occurring’ in food animals.” Letter from Rachel Edelstein to William D. Marler, Esq., at 3 (May 31, 2022). Although FSIS in that petition response noted it was considering reassessing its long-held view, the Agency still has provided no information to explain why *Salmonella*—which comes into plants on chicken skin and inside chickens, including in the muscle tissue—is not a substance naturally occurring in chickens. More established agency precedent reinforces that *Salmonella* is naturally occurring in raw chicken. See, e.g., Letter from Carmen Rottenberg, Acting Deputy Undersecretary, Office of Food Safety, to Laura MacCleery, Director, Center for Science in the Public Interest, at 1–2 (Feb. 07, 2018) (“We also disagree with your assertion that ABR *Salmonella* is an ‘added substance’ within the meaning of the adulteration provisions of the FMIA and PPIA.”).

stance as an adulterant in raw products. Congress’s choice of language is striking: under the PPIA, added substances adulterate food if they “*may* render it injurious to health,” whereas a product with naturally present pathogens “*shall not* be considered adulterated” if the substance “does not ordinarily render it injurious.”¹² The statute thus sets up two very different standards. “May” could imply FSIS has a measure of discretion in evaluating added substances, but the statute sets a significantly higher bar for naturally occurring substances. FSIS is prohibited from considering a naturally occurring substance a pathogen (“*shall not* be considered adulterated”) unless it can meet the very high bar of proving that the substance would “ordinarily” render the product injurious to health. Reinforcing this high bar, in its statement of policy codified into the PPIA, Congress commanded that decisions such as product condemnation “shall be supported by scientific fact, information, or criteria.”¹³ By default, naturally occurring substances are not pathogens, and FSIS must go to great scientific lengths to establish otherwise.

Second, the plain meaning of “ordinarily” sets a very high bar. When a statute does not define a term—and the PPIA does not define “ordinarily injurious”—courts will consider its plain meaning with reference to its reasonable use, dictionary definitions, and its use in context.¹⁴ Multiple dictionary definitions contemporaneous with the passage of the PPIA show us what Congress meant when it used “ordinarily.” *Webster’s* 1953 edition defines “ordinarily” as “according to established rules or settled method.”¹⁵ *Black’s Law Dictionary*, 1951 edition, defines the adverb by reference to “ordinary,” stating it means “regular” or “normal.”¹⁶ And *Oxford English Dictionary*, which examines the historical development of the term, defines it as “[b]elonging to the regular or usual order or course” or occurring in “regular custom or practice.”¹⁷ The term retains its meaning in modern parlance and as defined “usually; as a rule.”¹⁸ Thus, under the plain language of the PPIA, a naturally occurring substance can be considered an adulterant only if the substance “regularly” or “normally,” or through “regular or usual . . . course” or “regular custom or practice,” or “usually” or “as a rule” renders the product injurious to health.¹⁹ This simply is not the case.

As is well established, thorough cooking destroys *Salmonella*. Specifically, cooking raw chicken to an internal temperature of 165 °F achieves a 7-log reduction in *Salmonella*.²⁰ In fact, even a slightly lower temperature still achieves instant lethality (162 °F or 163 °F, depending on the fat content), as can reaching yet-lower-still temperatures with sufficient dwell time, often of just a few seconds.²¹ Even in the event raw chicken were cooked at yet lower temperatures, there would be a substantial log-reduction in *Salmonella*.

Consumers customarily cook chicken in a manner that achieves thorough cooking and destroys *Salmonella*. Chicken is customarily cooked through. Consumers are regularly reminded to use a meat thermometer to cook chicken to an internal temperature of 165 °F—including on the package itself—which achieves lethality. While NCC’s strong recommendation is that consumers use a meat thermometer, other less analytical ways to gauge “doneness”, such as cutting into the meat to see if it is visibly white and firm, are also highly likely to achieve lethality and certainly cannot be said to “usually” or “normally” result in the product being injurious to health. Chicken is not customarily cooked “rare” or “medium,” and waitstaff at restaurants do not ask patrons how they would like their chicken cooked because the default approach is to cook chicken all the way through. Certainly, it is not the case that due to handling and cooking practices, *Salmonella* in “regular custom or practices” causes the chicken to be injurious to health.

¹² 21 U.S.C. § 453(g)(1).

¹³ 21 U.S.C. § 452.

¹⁴ *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997).

¹⁵ *Webster’s New Twentieth Century Dictionary* 1177 (1953).

¹⁶ *Ordinary*, BLACK’S LAW DICTIONARY (4th ed. 1951).

¹⁷ *Ordinary*, OXFORD ENGLISH DICTIONARY (2d ed., 1989).

¹⁸ *Ordinarily*, WEBSTER’S NEW WORLD COLLEGE DICTIONARY (4th ed., 2010).

¹⁹ The legislative history behind comparable language in the Federal Food, Drug, and Cosmetic Act reinforces this interpretation. In one debate, members stated “ordinarily injurious” meant “that people—substantial numbers of people—must actually be harmed by the product before it can be restricted in any way. This provision . . . puts the burden of proof on the FDA.” 120 *Cong. Rec.* 36007 (1974) (Statement of Rep. Peter Kyros).

²⁰ FSIS, *FSIS Cooking Guidelines for Meat and Poultry Products (Revised Appendix A)*, Table 3, [USDA.gov](https://www.fsis.usda.gov/sites/default/files/media_file/2021-12/Appendix-A.pdf) (2021), https://www.fsis.usda.gov/sites/default/files/media_file/2021-12/Appendix-A.pdf.

²¹ FSIS, *FSIS Cooking Guidelines for Meat and Poultry Products (Revised Appendix A)*, Table 3, [USDA.gov](https://www.fsis.usda.gov/sites/default/files/media_file/2021-12/Appendix-A.pdf) (2021), https://www.fsis.usda.gov/sites/default/files/media_file/2021-12/Appendix-A.pdf.

In this manner, *Salmonella* in raw chicken is fundamentally different than Shiga toxin producing *E. coli* (STECs) in raw non-intact beef. FSIS attempts to draw parallels between these product-pathogen pairs, but the analysis misses the key distinctions. In the Proposed Framework, FSIS attempts to reduce its 1994 decision declaring *E. coli* O157:H7 an adulterant in raw ground beef (and subsequent extension to STECs in raw non-intact beef) to a set of “criteria,” all of which appear equally weighted: association with human illness, low infectious dose, severity of human illness, and typical consumer cooking practices.²² However, that is not actually the approach FSIS took, nor is it the analysis courts performed when evaluating FSIS’s *E. coli* policy.

In fact, FSIS’s analysis turned *primarily* on whether *E. coli* was likely to be destroyed under customary cooking practices for raw ground beef. In explaining its policy on *E. coli* O157:H7, FSIS provided background on the risks of *E. coli* O157:H7 but then expressly tied *E. coli* O157:H7’s status as an adulterant to cooking practices: “Raw ground beef products present a significant public health risk *because* they are frequently consumed after preparation (*e.g.*, cooking hamburger to a rare or medium rare state) that does not destroy *E. coli* O157:H7 organisms that have been introduced below the product’s surface.”²³ If that were not clear enough, FSIS continued, “the Agency believes that the status under the FMIA of beef products contaminated with *E. coli* O157:H7 *must depend* on whether there is adequate assurance that subsequent handling of the product will result in food that is not contaminated when consumed.”²⁴ Cooking practices were expressly the dispositive factor. This is reinforced by the fact that FSIS determined that intact cuts of beef, when contaminated with the exact same *E. coli* O157:H7, were not adulterated because “[i]ntact steaks and roasts and other intact cuts of muscle with surface contamination are customarily cooked in a manner than ensures that these products are not contaminated with *E. coli* O157:H7.”²⁵ FSIS again cited to customary cooking practices as the dispositive point in its 2011 *Federal Register* notice declaring several other STECs to similarly be adulterants in raw non-intact beef.²⁶ Thus, rather than being a four-factor analysis as presented in the Proposed Framework, there is only question: whether the customary cooking practices would ordinarily render the product injurious to health.

Courts recognize this distinction as pivotal. In upholding FSIS’s *E. coli* O157:H7 sampling program, and in a case that fundamentally turned on whether *E. coli* O157:H7 could properly be considered an adulterant in raw ground beef, the District Court for the Western District of Texas focused on whether the cooking practices that most Americans considered “proper” for ground beef were sufficiently “thorough” as to destroy *E. coli* O157:H7:

However, unlike other pathogens, it is not “proper” cooking but “thorough” cooking that is necessary to protect consumers from *E. coli*. The evidence submitted by Defendants indicates that many Americans consider ground beef to be properly cooked rare, medium rare, or medium. The evidence also indicated that *E. Coli* contaminated ground beef cooked in such a manner may cause serious physical problems, including death. Therefore, *E. Coli* is a substance that renders “injurious to health” what many Americans believe to be properly cooked ground beef.²⁷

In *Texas Food Industry Association*, just as in FSIS’s explanation, the entire analysis turned on whether customary consumer cooking practices were sufficient. Under the court’s reasoning, had what consumers understood to be “proper” cooking been adequate to destroy *E. coli* O157:H7 in hamburgers, then the substance would not have been an adulterant (just as it is still not an adulterant on raw intact beef).

But raw chicken is handled very differently than ground beef. Consumers do not customarily consider it “proper” to cook a medium rare chicken breast. Even ground chicken products such as chicken burgers or meatballs are customarily cooked through, not served rare. What consumers consider to be the “proper” or “customary” method is also a method that cooks chicken “thoroughly.”²⁸

²² Proposed *Salmonella* Framework at 10.

²³ FSIS, *Beef Products Contaminated with Escherichia Coli O157:H7*, 64 FED. REG. 2803, 2803 (Jan. 19, 1999) (emphasis added).

²⁴ *Id.* (emphasis added).

²⁵ *Id.* at 2804 (emphasis added).

²⁶ FSIS, *Siga Toxin-Producing Escherichia coli in Certain Raw Beef Products*, 76 FED. REG. 58157, 58158 (Sept. 20, 2011).

²⁷ *Texas Food Industry Ass’n v. Espy*, 870 F. Supp. 143, 149 (W.D. Tex., 1994).

²⁸ Other critical distinctions exist between STECs in raw non-intact beef and *Salmonella* in raw poultry. For example, *E. coli* typically enters the cattle slaughter process through cross con-

Courts have likewise recognized this distinction. The Fifth Circuit recognized that “*Salmonella* [is] present in a substantial proportion of meat and poultry products” and “is not an adulterant *per se*” because “normal cooking practices for meat and poultry destroy the *Salmonella* organism.”²⁹ The D.C. Circuit reached a similar conclusion in *American Public Health Ass’n v. Butz*, holding “the presence of salmonellae on meat does not constitute adulteration” and that “American housewives and cooks are not ignorant or stupid and their methods of preparing and cooking of food do not ordinarily result in salmonellosis.”³⁰ In other words, existing circuit precedent indicates the mere “presence of *Salmonella* in meat products,” without more, does not support USDA regulation under § 453(g)(1).³¹

FSIS, too, has long and consistently recognized that *Salmonella* is not an adulterant in raw poultry. For example, as recently as this year, FSIS denied a petition requesting FSIS declare certain *Salmonella* strains to be adulterants in raw poultry. In 2018, FSIS denied a different petition making a similar request to declare certain *Salmonella* strains as an adulterant in raw meat and poultry. In its 2016 *Federal Register* notice announcing new *Salmonella* performance standards for poultry, FSIS clearly explained, “*Salmonella* is not an adulterant in NRTE poultry products.”³² In 2014, FSIS rejected a petition to declare antibiotic resistant *Salmonella* an adulterant, stating “we are not aware of any data to suggest that consumers consider ground poultry . . . to be properly cooked when rare, medium rare, or medium.”³³ Crucially, USDA has never argued that *Salmonella* is an adulterant under § 453(g)(1). Instead, it has argued the opposite in litigation and policy documents. For example, in the *Supreme Beef* case on the enforceability of *Salmonella* performance standards, the court noted, “The USDA agrees in this case that *Salmonella* is not a[n] . . . adulterant.”³⁴

In light of this long and consistent history, and even if the PPIA were to permit such an interpretation, FSIS would be hard-pressed to provide a rationale that its change in policy was not arbitrary and capricious or that an abrupt change in position was warranted by the record.³⁵ As it stands, FSIS has presented no data to support a conclusion that *Salmonella* in raw chicken “ordinarily” or “usually” renders chicken injurious to healthy under customary cooking practices.

Finally, the Proposed Framework would entail creating new substantive requirements affecting the rights of NCC member companies, which would make it a legislative rule, and would require amending or creating multiple regulations. If FSIS were to pursue the Proposed Framework, the Administrative Procedure Act would require FSIS to engage in a substantial amount of notice-and-comment rulemaking, which would require FSIS to develop and make available for public comment a record comprehensively addressing the numerous factual and scientific issues raised by the Proposed Framework.

Fundamentally, FSIS has provided no explanation for making an abrupt change in its approach to *Salmonella* in raw poultry, as it would be required to do. Under the plain language of the PPIA and long-standing case law, FSIS cannot compile a scientific basis for declaring *Salmonella* an adulterant in raw poultry. Accordingly, the Proposed Framework stands on infirm legal footing. We urge FSIS to instead pursue alternative approaches for which it has authority, such as revamped *Salmonella* performance standards, as explained elsewhere in these comments.

tamination with fecal matter on the outside of the hide, which can get transferred to the meat if sanitary practices are not observed. By contract, *Salmonella* actually enters in the chicken, including in edible parts of the chicken. No amount of process control or sanitary dressing can prevent its being in the product because it starts out in the product.

²⁹ *Supreme Beef Processors, Inc. v. U.S. Dep’t of Agric.*, 275 F.3d 432, 438–39 (5th Cir. 2001).

³⁰ *American Public Health Ass’n v. Butz*, 511 F.2d 331, 334 (D.C. Cir. 1974).

³¹ See also, e.g., *Starr Surplus Lines Ins. Co. v. Mountaire Farms Inc.*, 920 F.3d 111, 117 (1st Cir. 2019) (“[T]he mere fact of the FSIS-orchestrated recall does not give rise to the plausible inference that the type of *Salmonella* found . . . could not be eliminated by proper cooking.”); *Craten v. Foster Poultry Farms Inc.*, 305 F. Supp. 3d 1051, 1058 (D. Ariz. 2018) (observing that existing case law “suggests *Salmonella* is not an adulterant” and rejecting several state law tort claims because *Salmonella* “is killed through proper cooking, which is how raw chicken products are intended to be used”).

³² FSIS, *New Performance Standards for Salmonella and Campylobacter in Not-Ready-to-Eat Comminuted Chicken and Turkey Products and Raw Chicken Parts and Changes to Related Agency Verification Procedures: Response to Comments and Announcement of Implementation Schedule*, 81 FED. REG. 7285, 7297 (Feb. 11, 2016).

³³ Letter from Daniel Engeljohn, Assistant Adm’r, Off. of Pol’y & Program Dev., USDA, to Sarah Klein, Food Safety Program (July 31, 2014).

³⁴ *Supreme Beef*, 275 F.3d at 439 n. 21.

³⁵ See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 34 (1983).

The Proposed Framework Lacks Adequate Supporting Data

As a public health agency, FSIS has long promoted the use of sound science-based decision-making, which by definition must be based on, and driven by, scientific data. FSIS has presented no data to suggest a change in policy is needed or to support the proposals or assumptions in the Proposed Framework. This is regrettable, as without supporting data, the Proposed Framework appears almost entirely speculative. The complete lack of data makes it impossible to provide meaningful feedback on key areas, such as whether the data calls for a change in policy, whether the Proposed Framework is supported by the data, and whether the specific elements of the Proposed Framework were developed appropriately in light of that data. NCC firmly believes that it is imperative that public health decisions and policy follow the data, not the other way around.

Data Issues Related to the Proposed Framework

FSIS must first develop data and conduct risk assessments and use that data to determine what, if any, policy changes are called for. There are a number of key missing data elements. For example:

- There is no data to support the idea that *Salmonella* levels on incoming flocks overwhelm food safety systems or would need to be monitored.
- There is not data to demonstrate that setting a finished product standard would have public health impacts, or what standard to even set.
- There is no data to suggest that additional testing during the process beyond what is already done would be impactful.
- We understand that FSIS has not even begun the two risk assessments, which would presumably provide useful insight to use in developing policy proposals.

In effect, the Proposed Framework seems to reflect a presumption that the proposed changes would be effective and has asked stakeholders to rebut that presumption. This applies the policy development process backwards.

Moreover, without data or details, it is impossible to provide meaningful feedback on the proposal. For example, stakeholders have no ability to assess whether the data supports the proposed actions or whether the actions are appropriate in light of the data. The Proposed Framework is devoid of virtually all key details, raising many questions and leaving just as many unanswered. To take but one example, FSIS has not explained why it has contemplated proposing a 1 CFU/g finished product standard, especially given that FSIS testing has a limit of detection (LOD) at 10 CFU/g and cannot accurately enumerate at the 1 CFU/g level and that FSIS has not begun two risk assessments seemingly designed to address this exact question.

What little data FSIS has referenced contains significant flaws:

- CDC's National Outbreak Reporting System, or NORs, is a web-based platform that launched in 2009.³⁶ It is used by local, state, and territorial health departments in the United States to report all waterborne and foodborne disease outbreaks and enteric disease outbreaks transmitted by contact with environmental sources, infected persons or animals, or unknown modes of transmission to CDC. From 2009 to 2020, NORs reported 15,344 poultry-related *Salmonella* illnesses, which represents 29.3% of all *Salmonella* illnesses (there were 52,374 total *Salmonella* illnesses reported from 2009 to 2020). Critically, however, that figure lumps together illness from both live poultry (*e.g.*, handling a backyard flock) and consumption of poultry. Separating out the live-poultry exposures yields a very different result. 8,475 of the 15,344 poultry-related illnesses were attributed to live poultry—for example, handling chicks or interacting with backyard flocks—and not related to chicken consumption at all. Chicken consumption accounts for 5,076 cases in the NORs data, which represent 9.7% of all salmonellosis cases in the U.S. from 2009 to 2020. While the industry is committed to driving this number down further, failing to properly distinguish foodborne illness and the more-prevalent live-bird exposures significantly overstates the effect of chicken consumption on illness burden in the NORs data.
- The IFSAC report makes clear several important limitations: The illness estimates “should not be interpreted as suggesting that all foods in a category are equally likely to transmit pathogens.” The authors also urge “caution” in “comparing estimates across years” as the percentages reflect a relative contribution to illness burden, which means a category could see its actual illness contribution decrease yet its relative percentage increase if other categories dropped

³⁶Center for Disease Control, *National Outbreak Reporting System*, Center for Disease Control, CDC.gov (2019), <https://www.cdc.gov/nors/index.html>.

even further. The authors expressly “advise using these results with other scientific data for decision-making.”³⁷ The IFSAC report alone cannot drive scientifically based policy. Further, the illness contribution attributed to chicken is statistically indistinguishable from that of fruits, seeded vegetables, and pork and is followed very closely by “other produce.”³⁸ This statistical parity between product categories suggests that a coordinated approach applying measured strategies against all of these categories would have a much greater public health impact than merely singling out one category without addressing the other.

- As previously mentioned, salmonellosis incident rates attributed to chicken have decreased over the last decade when per-capita chicken consumption patterns are considered. Changes in consumption patterns are critical for assessing foodborne illness and must be considered to properly evaluate changes in illness rates or the significance of source attribution.
- If FoodNet Fast, NORS, and IFSAC data were reflective of consumption patterns of chicken over time, the overall burden of illness attributed to chicken would actually have decreased.
- FSIS has also left unaddressed whether the Proposed Framework would make an impact on the Healthy People 2030 goals, and if so, what impact would be anticipated and how it would be determined.

In light of these substantial data gaps, it is essential that FSIS prioritize generating and making publicly-available key data before continuing further in this process. The Agency is currently working towards the development of two quantitative risk assessments—one focused on *Salmonella* in chicken and the other focused on *Salmonella* in turkey. In the July 1, 2022, *Constituent Update*, FSIS announced that it has signed a cooperative agreement with the University of Maryland’s Joint Institute for Food Safety and Applied Nutrition (JIFSAN) in partnership with EpiX Analytics to help in the Agency’s data collection effort for these risk assessments. NCC has engaged with JIFSAN routinely since July 2022 to understand this group’s approach to data collection, the specific data needs, and how NCC and our member companies can aid in this process. Unfortunately, FSIS only provided the JIFSAN team 3 months to work with trade associations like NCC to understand data needs, develop a platform by which data could be shared, and fully understand the goals of the Agency. This timeline has proven to be insufficient as we are approaching the end of 2022 and this group, in conjunction with several trade associations, industry representatives, and FSIS, has still not been able to execute the intended data collection effort.

Although the process has not progressed as quickly as FSIS seemed to expect, NCC believes that the approach to formalize two risk assessments is appropriate. Moreover, we support the risk management questions that the risk assessments intend to address including:

1. What public health impact (change in illnesses, hospitalizations, and deaths) is achieved by eliminating a proportion of chicken (or turkey) at receiving contaminated with specific levels of *Salmonella* and/or specific *Salmonella* subtypes?
2. What is the public health impact (change in illnesses, hospitalizations, and deaths) achieved by eliminating final product contaminated with specific levels of *Salmonella* and/or specific *Salmonella* subtypes?
3. What is the public health impact of monitoring/enforcing process control from re-hang to post-chill? Monitoring could include analytes such as Enterobacteriaceae, Aerobic Plate Count, or other indicator organisms, analysis could include presence/absence or levels and the monitoring could also include variability of actual result *versus* expected result, log reduction, absolute sample result, or other individual establishment specific criteria.
4. What is the public health impact of implementing combinations of the risk management options listed above?

³⁷The Interagency Food Safety Analytics Collaboration, *Foodborne illness source attribution estimates from 2020 for Salmonella, Escherichia coli O157, and Listeria monocytogenes using multi-year outbreak surveillance data, United States*, at 12 (Nov. 2022), <https://www.cdc.gov/foodsafety/ifsac/pdf/P19-2020-report-TriAgency-508.pdf>.

³⁸The Interagency Food Safety Analytics Collaboration, *Foodborne illness source attribution estimates from 2020 for Salmonella, Escherichia coli O157, and Listeria monocytogenes using multi-year outbreak surveillance data, United States*, at 8 (Nov. 2022), <https://www.cdc.gov/foodsafety/ifsac/pdf/P19-2020-report-TriAgency-508.pdf>.

As stated in the July 1, 2022, *Constituent Update*, “These risk management questions reflect the information needed to evaluate and compare the public health benefits of policy options for controlling *Salmonella* in poultry.” The Agency went on to state that the risk assessments would undergo an independent peer review and be released publicly once completed. To reiterate, NCC fully supports the completion of and the independent peer review of both risk assessments. NCC believes that it is imperative that any policy changes rely on the results of the risk assessments and without that information, it is impossible to understand what regulatory changes, if any, would impact public health. It also makes it very challenging for the regulated industry to provide meaningful comments with this information lacking, and the Agency has not disclosed their sources of data used to develop the Proposed Framework. Without the completion, peer review, and publication of the two risk assessments, the Agency risks operating without the benefit of a robust record, undermining informed decision making.

Finally, there are two national advisory committees whose recommendations may influence the content of the Proposed Framework: the National Advisory Committee on the Microbiological Criteria for Foods (NACMCF) and the National Advisory Committee on Meat and Poultry Inspection (NACMPI). Charges of both advisory committees include a focus on *Salmonella* in poultry among other topics. We encourage FSIS to update its thinking on the Proposed Framework in light of many of the recommendations by these advisory committees.

Data Recommendations

Given the critical role data plays in public health decisions, NCC provides the following data recommendations:

1. Complete the two risk assessment studies, submit them for peer review, and release them for public review once complete.
2. Use the risk assessment results to inform further development of the Proposed Framework.
3. Provide the public a detailed report with the data, information, and scientific analysis supporting the key elements of the Proposed Framework and provide an opportunity for public comment on the Proposed Framework based on the report.
4. Consider key NACMCF and NACMPI recommendations as they may apply to the Proposed Framework.
5. Hold technical meetings with stakeholders to discuss in detail the changes and complications that would be raised by any aspect of the Proposed Framework being contemplated. These should be made part of the administrative record in any subsequent rulemaking, and they should be held *before* any rulemaking is initiated to facilitate open dialogue.

Feedback on Component 1—Incoming Flock Testing

NCC has significant concerns that Component 1 of the Proposed Framework exceeds FSIS’s authorities, is not supported by data, would be impractical, and is unnecessary. We suggest alternative approaches that will better achieve FSIS’s objectives within the confines of law and reality.

Component 1 would have FSIS mandate on-farm testing, impose an incoming flock *Salmonella* standard, seemingly provide FSIS inspectors with the ability to dictate which flocks may or may not enter an establishment, and force establishments to view *Salmonella* as a hazard reasonably likely to occur (RLTO) at receiving. None of these actions are appropriate, and they risk significantly undermining existing policy and systems.

FSIS Lacks Authority to Regulate Farms

First, FSIS lacks jurisdiction to mandate on-farm testing, although Component 1 would do just that. The PPIA is clear that FSIS’s authority begins at the official establishment. FSIS’s primary slaughter-related inspectional authorities are expressly limited to operations in official establishments:

- *Ante mortem* inspection: “[T]he Secretary shall, where and to the extent considered by him necessary, cause to be made by inspectors ante mortem inspection of poultry **in each official establishment** processing poultry or poultry products. . . .”³⁹
- *Post-mortem* inspection: “The Secretary, whenever processing operations are being conducted, shall cause to be made by inspectors post mortem inspection

³⁹ 21 U.S.C. § 455(a).

of the carcass of each bird processed . . . in each **official establishment** processing such poultry or poultry products . . .”⁴⁰

- Sanitary practices: “Each **official establishment** slaughtering poultry or processing poultry products . . . or otherwise subject to inspection under this chapter shall have such premises, facilities, and equipment, and be operated in accordance with such sanitary practices, as are required by regulations promulgated by the Secretary for the purposes of preventing the entry into . . . commerce, of poultry products which are adulterated.”⁴¹
- General compliance: “No **establishment** processing poultry or poultry products for commerce otherwise subject to this chapter shall process any poultry or poultry product except in compliance with the requirements of this chapter.”⁴²

It is telling that even *ante mortem* inspection, which is inspection of live birds, must occur at the official establishment. Had Congress wished for FSIS to be able to oversee farms, Congress could have given that authority to FSIS. Instead, Congress specifically limited FSIS’s inspectional and oversight activities to official establishments, even for the inspection of live birds. FSIS has long agreed with this limitation. For example, in the final rule implementing HACCP, FSIS expressly recognized that “FSIS does not intend nor is FSIS authorized, to mandate production practices on the farm.”⁴³ Thus, not only does the statute specifically limit FSIS’s authority to official establishments (and further distribution therefrom), but FSIS also expressly recognizes this limitation in its foundational rulemaking for the very HACCP framework that FSIS proposes using to regulate activity on farms.

By establishing *Salmonella* thresholds for incoming flocks, FSIS would require that farms take actions to prevent *Salmonella* levels on flocks from exceeding the incoming threshold level. Farms would have to figure out how to monitor *Salmonella* levels and would be required to take actions to bring levels to within FSIS’s target, otherwise the flocks are of essentially no economic value. FSIS is very clear about its intent. Component 1 is entitled, “Requiring incoming flocks be tested for *Salmonella* before entering an establishment.”⁴⁴ This testing would have to occur on farms, and by the plain language of the Proposed Framework would happen before reaching the establishment. In other words, FSIS would be “mandating production practices on the farms,” which FSIS has long recognized it may not do.

Positioning the threshold merely as a receiving criteria that applies to the official establishment does not help because the only way to ensure a flock meets the incoming criteria is to require a farm to take various actions to ensure the threshold is met. No matter how FSIS phrases the threshold, the application of a threshold would require farms take actions, which FSIS may not do. FSIS cannot achieve through an indirect regulation what it lacks authority to do directly.

Further, setting a *Salmonella* threshold for incoming flocks necessarily implies that *Salmonella* above the threshold (1) renders the incoming birds adulterated and (2) that the purported adulteration cannot be corrected through processing. The only explanation for prohibiting entry of flocks that test above a certain *Salmonella* threshold is that the flocks would somehow irreparably adulterate any finished product that would be produced from them. FSIS would have no basis to arbitrarily restrict the use of flocks otherwise. But as explained above, *Salmonella* does not render raw poultry adulterated, and FSIS has presented no evidence to change this longstanding conclusion. Moreover, by categorically prohibiting entry, FSIS is indicating there is no means for an establishment to correct the purported adulteration, otherwise under HACCP principles the establishment could accept and process the product to correct the issue. FSIS has presented no evidence to indicate that flocks with *Salmonella* above a certain threshold are *per se* adulterated, much less somehow irreparably so.

Additional Issues Pertaining to Component 1

Even setting aside FSIS’s lack of authority to regulate on-farm activities, Component 1 suffers from numerous other issues. First, FSIS has presented no data to demonstrate that an incoming threshold is necessary for an establishment to maintain process control and sufficiently reduce *Salmonella* during processing; no information to explain how a threshold would be determined or what data FSIS or an establishment would use to do so; no data to establish that on-farm *Salmonella* sampling several weeks before a flock is processed correlates in a reliable way to actual

⁴⁰ 21 U.S.C. § 455(b).

⁴¹ 21 U.S.C. § 456(a).

⁴² 21 U.S.C. § 459(a).

⁴³ 61 *Fed. Reg.* 38806, 38810 (July 25, 1996).

⁴⁴ *Salmonella* Framework at 5 (emphasis added).

incoming *Salmonella* loads at the beginning of processing; no data to demonstrate that reducing incoming loads would achieve any particular public health impact; and no data to demonstrate that incoming loads require measuring for HACCP systems to operate as designed. Without data to support such a substantial policy shift, the Agency cannot justify its approach, nor can stakeholders meaningfully provide informed feedback on whether the approach is justified by or consistent with the data. Science-based policymaking must start with data.

Second, a mandatory receiving threshold would be fundamentally inconsistent with HACCP principles. Under HACCP, establishments, not inspectors, make decisions about how to execute their food safety systems. FSIS's role is to verify that the HACCP system is designed and scientifically supported in accordance with FSIS regulations and that the establishment is implementing the HACCP plan as intended. FSIS's role decidedly is not to tell an establishment which flocks may be processed, and which may not. Component 1 would wind back the food safety clock a quarter century and reimpose a long-abandoned command and control approach to poultry processing.

Third, Component 1's proposed requirement that establishments declare *Salmonella* as a hazard RLTO at receiving is inconsistent with HACCP principles. Under HACCP, the establishment—not FSIS—is required to conduct its own hazard analysis, identify those hazards that are RLTO in the process, and implement Critical Control Points (CCPs) accordingly. If *Salmonella* were a hazard RLTO at receiving, it is unclear what step would be the CCP and how an establishment would be expected to validate that CCP.

Fourth, Component 1 is likewise inconsistent with established FSIS inspectional approaches because FSIS cannot verify the testing. FSIS typically must be able to verify the data used by an establishment to support its food safety system, but it is unclear how FSIS would verify incoming flock testing that occurred on a farm several weeks before a flock arrived at the establishment. FSIS's proposal to conduct verification testing at rehang is not appropriate for verifying on-farm testing. Several weeks would have passed from the time an on-farm sample was collected and FSIS's rehang sampling, and the microflora would be expected to change during this time. On-farm data would likely be collected by drag or boot swabs, which is a very different sampling process than taking a rehang sample. More importantly, however, is that fact that there is inconclusive evidence as to what method of on-farm testing actually yields repeatable and defensible results. Additionally, different enumeration technologies could yield different results and different confidence intervals. Moreover, between the time of on-farm testing and rehang sampling, the birds or carcasses will have undergone multiple interventions and processing interventions that affect *Salmonella* load. Even the Agency's own instructions in the Raw Chicken Parts Sampling Program require IPP to sample eligible chicken parts after the last intervention is applied.⁴⁵ Simply put, rehang samples would not correlate with on-farm samples, nor has FSIS provided any data to demonstrate otherwise.

Fifth, pre-harvest sampling would impose significant burden across the entire industry. NCC estimates that between 260,000 and 300,000 flocks were required to reach USDA's estimate for chickens processed in 2021. That would require collecting and testing between 260,000 and 300,000 samples annually, in rural locations, to comply with the proposal, and that is assuming each flock requires only one test. This would impose a substantial cost, pose unnecessary biosecurity risks, and overwhelm existing laboratory capacity and supply availability.

Sixth, challenges would also complicate FSIS verification sampling. For example, FSIS would have to collect a large number of samples to obtain a statistically reliable measure of the *Salmonella* level of a flock—one hot rehang sample would not suffice. It is doubtful FSIS has the sampling or laboratory capacity for this. It is also not clear how FSIS would handle outliers. For example, would the flock be evaluated by the average load or by the highest result, and how would FSIS obtain enough samples to have a sufficiently narrow confidence interval around the result? And even if FSIS could obtain this information, how would FSIS be able to meaningfully compare it to on-farm sampling conducted weeks earlier, using different sampling and possibly test methods, and reflecting birds before they had undergone various processing steps?

Seventh, it is unclear how FSIS would handle the inherent delay in receiving results for its verification testing, which, especially for enumeration, could take a significant amount of time until results are obtained. The flock would likely have been processed, the resulting products shipped, and perhaps even consumed well before FSIS received its verification results. But if the purpose of rehang sampling is to

⁴⁵ FSIS, *Raw Chicken Parts Sampling Program*, USDA.gov (2021), https://www.fsis.usda.gov/sites/default/files/media_file/2020-08/10250.1-Raw-Chicken-Parts-Sampling-Program.pdf.

verify the establishment is properly conducting on-farm sampling and meeting the Agency's pre-determined threshold at live receiving, several serious logistical and practical problems arise. If FSIS is framing the proposed live receiving threshold as an acceptance criterion, with the implication being that a flock whose verification sampling exceeds the threshold should be rejected, then typically the establishment would be expected to hold the flock pending the results of FSIS's verification sampling. But holding an entire flock's worth of production every time FSIS conducted verification sampling would be extraordinarily burdensome and in effect impossible for most establishments. But if the establishment were allowed to ship the product before FSIS received the rehang verification results, it is unclear how the establishment would be able to implement corrective action. And it is entirely unclear how FSIS would view a situation in which the FSIS rehang verification sample was above the live receiving "threshold" yet the product from that flock met an enforceable finished product standard.

Additional logistical and practical problems abound. For example:

- It is unclear at what time period a flock would be required to be tested, how that would be determined, whether it would vary for different bird types, housing conditions, farm location, and market weight of the flock, among many other compounding factors.
- It is unclear what test method should be used for on-farm testing, as different methods might yield different types of results.
- Mandating such a high volume of on-farm testing could pose significant logistical difficulties in getting supplies and samples, especially to and from remote rural areas.
- It is entirely unclear what on-farm testing strategies would best reflect the load (or, if used, serotypes) actually entering the plant. Substantial industry testing has shown this is very difficult to do, and FSIS has provided no data on this point.
- How would issues such as testing delays, lost samples, equivocal results, or lab error resulting in a flock not having an on-farm test result be handled? A flock cannot be held past its target catch date without risking serious bird welfare issues.

FSIS has not addressed what would happen to a flock that tested above threshold. FSIS's contemplated policy could have catastrophic bird welfare outcomes and could result in flocks being needlessly held, delayed, diverted, or euthanized. Likewise, the proposal risks imposing substantial financial losses on the family farmers who raise the majority of broiler chickens and now might be left with flocks that cannot be brought to market and processed.

At bottom, FSIS's contemplated proposal would introduce a tremendous number of challenges and would be inconsistent with established HACCP principles. The reality is that the industry already implements numerous preharvest intervention strategies to reduce *Salmonella* loads coming into establishments, and they have done so even though they are not required to. For example, robust preharvest *Salmonella* control strategies are widely implemented across the industry to include programs in the hatchery, feed mill, breeder house, and broiler house. These programs include, but are not limited to:

- Biosecurity programs
- Equipment sanitation
- Feed treatment
- Litter treatment
- Water sanitation programs
- Feeding of prebiotics and probiotics
- Rodent/insect control
- Cleanout programs
- Vaccinations

The industry is already taking significant steps to address *Salmonella* in preharvest. Component 1 would contribute nothing but would impose considerable cost and complication. If FSIS's objective is to enhance process control and drive down finished product *Salmonella* levels, a much more direct and efficient approach would be to consider an enumerated performance standard for finished products and allow establishments to innovate and design their systems as appropriate to meet that target.

Component 1 Recommendations

In light of the substantial legal, scientific, and practical considerations associated with Component 1, NCC recommends the following:

1. FSIS should not establish incoming flock thresholds.
2. If FSIS wants to better understand process control throughout the process, from live receiving to pack-out, FSIS should engage in more extensive exploratory rehang sampling programs and use that data, along with FSIS data from other sampling points, to analyze process control throughout processing and to inform risk assessment modeling.
3. As discussed further below, FSIS should instead consider an enumerative performance standard after a baseline and qualitative risk assessment is performed. Establishments should be provided the flexibility to design science-based systems specific to their operations to meet that standard.

Feedback on Component 2—In-Process Testing

NCC is concerned that Component 2 would be too prescriptive and could stifle food safety innovation. Component 2 would require establishments to conduct in-process testing at specified points using certain indicator organisms. Establishments already conduct extensive in-process testing, and a command-and-control-style approach dictating testing at certain points would be counterproductive.

As with other elements of the Proposed Framework, FSIS has provided no data to explain why Component 2 is needed, what benefits Component 2 would have on food safety outcomes, or how the testing locations, frequencies, or target organisms would be selected, among others. Without this information, it is impossible to thoroughly evaluate options, offer meaningful feedback, or understand whether the Agency's proposal is a reasonable response to the data. As with the other Components, it is critical that FSIS first develop and make available its data and then make decisions based on that data in a transparent manner.

As discussed above, HACCP principles dictate that establishments, not FSIS, are to develop and implement their food safety plans, including any process control monitoring strategies. Chicken processors do this, and processors collect substantial volumes of data throughout their processes. It is inappropriate to dictate specifically where an establishment must sample, how frequently it must sample, and what it must sample for. Doing so risks stifling innovation. An overly rigid sampling framework will hinder innovation and technology development by creating outsized focus on specific points and specific target organisms. Instead, plants should be encouraged to innovate by testing at the appropriate point for their systems, which in turn will provide more data and more impetus to drive technological improvements. A rigid framework also risks punishing companies whose food safety systems are better monitored using different testing protocols than called for under FSIS's one-size-fits-all approach. Such a company would be forced to choose between incurring the cost of additional sampling or implementing FSIS's less-effective approach. Similarly, a rigid framework risks diverting limited company resources away from the most effective sampling points to meet the regulatory sampling requirements. None of these outcomes promote food safety.

Moreover, FSIS seems to contemplate requiring all establishments to follow the same process control methodologies, or perhaps requiring all establishments to meet the same process control standard. This would be inappropriate. Each establishment must be free to monitor process control as appropriate for their systems. FSIS has provided no data to show that it is appropriate or even feasible to evaluate all establishments using the same standard, especially if establishments have different line configurations or intervention strategies relative to FSIS-mandated sampling points. Without more information about what FSIS means by "requiring establishments to use the same statistical process-control method," it is difficult to provide specific feedback, but establishments need the ability to design their testing programs to reflect their processes, and they should be evaluated on their ability to implement their plans successfully, not against a rigid benchmark that might not reflect their operations.

FSIS's science-based changes implemented through the New Poultry Inspection System created the opportunity for greater science-based decision-making by enhancing establishments' flexibility and promoting more science-based verification activities by FSIS. Mandating that establishments follow fixed sampling plans would be a step backward from this more modernized approach. Instead, FSIS should be encouraging establishments to innovate and implement tailored food safety systems.

Component 2 Recommendations

In light of these concerns, NCC makes the following recommendations:

1. Consider specifying where, when, and how FSIS will collect process control verification samples, and let establishments develop their own individual sampling plans as appropriate for their operations. This approach would provide FSIS a consistent frame of reference but leave establishments free to design their processes as they determine will best promote food safety.
2. Use FSIS verification sampling results to feed into risk assessment modeling to better understand process control considerations.
3. Encourage individualized sampling plans and strategies for establishments.
4. Encourage plants to utilize Statistical Process Control (SPC) by providing detailed guidance on options for application and key locations. This could be particularly helpful for small and very small establishments and could be developed in conjunction with the appropriate academic institution.

Feedback on Component 3—Enforceable Final Product Standard

NCC strongly opposes setting an enforceable finished product standard for raw chicken. Such a standard would be legally infirm since FSIS has provided no data to demonstrate why any standard, much less the contemplated 1 CFU/g threshold, is scientifically appropriate. Regardless of how implemented, an enforceable finished product standard would impose substantial logistical and technical challenges on the industry.

FSIS Lacks Legal Authority to Implement a Finished Product Standard for Raw Chicken

FSIS lacks statutory authority to establish an enforceable finished product standard for *Salmonella*. For a threshold-based finished product standard to be legally enforceable, FSIS would have to determine, through scientific data, that the substance is not an added substance, and that the substance would “ordinarily render [the product] injurious to health” at levels above the threshold. Otherwise, the product would not be adulterated and there would be no legal mechanism FSIS could use to enforce the standard. As explained above, *Salmonella* is not an adulterant in raw chicken, a position consistently reflected in decades of Agency policy and court decisions.

Such a cavalier proposed change to Agency policy is especially alarming because FSIS has provided absolutely no data to support its proposal. FSIS has provided no data, in the context of the Proposed Framework or otherwise, to support a conclusion that *Salmonella* above any threshold level would “ordinarily render” raw chicken injurious to health, much less the 1 CFU/g threshold contemplated in the Proposed Framework. Nor is NCC aware of any.

NCC is gravely concerned that FSIS has abandoned science-based decision-making in Component 3. Sound science-based policymaking requires first developing data and then developing policies in light of that data. In the Proposed Framework, FSIS has gone about its decision-making backwards. FSIS appears to have a desired outcome in mind and has asked for data to support it. The 1 CFU/g threshold previewed in the Proposed Framework appears entirely arbitrary. If anything, it appears simply to be set as close to zero as possible without actually creating a zero-tolerance standard.

FSIS has not explained why an enforceable product standard is appropriate, why it should be set at 1 CFU/g, or why it should apply uniformly to *all* raw poultry regardless of differing commercial and consumer applications and known differences in *Salmonella* levels in different types of poultry.

Just as troubling, the Proposed Framework suggests FSIS is not interested in developing data to test its proposed threshold. For example, FSIS has indicated it does not intend to conduct a baseline enumeration survey, which would make it impossible to assess the current level of *Salmonella* present on raw poultry and to determine the public impacts of this or any other change. We question how FSIS can be confident that 1 CFU/g is an appropriate threshold for a finished product standard when FSIS does not even know what levels are actually present on finished products today. Moreover, FSIS has indicated it is conducting two risk assessments, but we understand the data collection analysis to begin those risk assessments has not even begun. We fail to understand why FSIS would, knowing that it is conducting risk assessments to provide information addressing this very point, nonetheless move forward and propose a specific finished product threshold at this point. The appropriate approach would be to conduct the risk assessments, conduct a baseline, gather and analyze any additional data needed, and only then determine whether a finished product standard might be appropriate and, if so, how to develop such a standard.

Moreover, while a risk assessment is essential for projecting the likely effect of different proposed standards on public health and product risks, for a risk assess-

ment to provide value, the risk must be accurately identified, analyzed, and evaluated. A risk assessment is but one component of the broader science-based decision-making process. To determine the level of risk mitigation that would have a meaningful impact on public health, the Agency must implement a comprehensive risk analysis strategy, which must include three components: the risk assessment itself, risk communication, and risk management. Moreover, a risk assessment cannot itself determine whether a product is adulterated. That standard is established in the PPIA, which as discussed above requires demonstrating that a naturally occurring substance renders the product “ordinarily” injurious to health.

Finally, we understand that FSIS may be considering applying a potential finished product standard differently depending on the size of the establishment. If the finished product standard is an adulteration standard—which is the only way it could be enforceable—the PPIA provides no such flexibility. Under the PPIA, if a product is adulterated, the product is adulterated regardless of the size of the establishment involved.

At bottom, the PPIA’s adulteration standard for naturally occurring substances requires a very clear scientific analysis: the substance has to “ordinarily” render the product injurious to health at the threshold level. Otherwise, by law, the product is not adulterated. FSIS has not provided any information to support such a determination. And without such information, it is impossible to meaningfully critique the contemplated approach.

Component 3 Raises Myriad Unresolved Issues

Beyond the grave legal concerns, Component 3 raises numerous other complex issues that remain unaddressed. For example, the necessary testing technology simply does not exist. FSIS’s assumption that testing technology with sufficient throughput, sensitivity, and speed will materialize simply because FSIS wills it is arbitrary. In fact, FSIS’s own newly approved testing technology has a LOD of *Salmonella* at 10 CFU/g, so it is unclear how FSIS would even evaluate compliance with the contemplated 1 CFU/g standard. Moreover, the fact that FSIS is unable to accurately quantify *Salmonella* at 1 CFU/g with its method casts considerable doubt on how FSIS developed this proposed standard.

Moreover, raw chicken is a highly perishable product with a short shelf life, and supply chains are not set up to hold substantial quantities of raw chicken. But an enforceable finished product standard would require testing and holding of enormous quantities of raw chicken until results are received. There simply is not enough cold storage in the country to accomplish this, and a widescale test and hold program would significantly degrade product shelf life and quality. Companies may be forced to destroy product or divert it to the cooking market, which accounts for only a modest amount of chicken production and would quickly find both demand and processing capacity outstripped. FSIS’s policy threatens to constrict the supply of raw chicken, which in turn risks driving up food inflation and heightening food insecurity for America’s most vulnerable families.

Likewise, an “enforceable” final product standard implies that FSIS would request a recall if a product were found to exceed the standard, and it is entirely unclear how lotting would be determined when establishing the scope of a recall. For example: Would lots be defined on a flock-by-flock basis? What about other flocks processed earlier or later that day? Would all chicken that contacted the same chiller water be included in recall? How would rework and hang-backs be handled? If parts of a day’s production were sent to a different use, would all products from that day or flock be implicated? If a specific part, such as thighs, exceeded the standard, would that also affect other parts made from that flock, such as breasts? What if some types of parts exceed the standard but others do not? All of these questions, and many more, would require careful, considered analysis. NCC is extremely concerned that under the Proposed Framework, a single test result could cause the recall of an extremely large amount of product. There are much better ways to focus efforts on driving down levels of *Salmonella* without raising these extremely complicated issues.

FSIS has also provided no information on how it would expect establishments to test entire production lots of raw chicken in a statistically meaningful way. Raw chicken is not like raw non-intact beef, where lots can be limited to specific source materials and tested individually. Raw chicken production lots are very large, and *Salmonella* is unlikely to be uniformly distributed in a lot. As a result, it would be necessary to collect a tremendous number of samples to have confidence that the result is representative of the entire production lot. A single sample would be wholly inadequate. It is unclear if FSIS has the laboratory resources to adequately sample and analyze finished products lots, and it would impose considerable costs on establishments to do so. Moreover, raw poultry cannot be lotted in a way to limit lot size

for finished product testing, and there would be no way to form lots conducive to a finished product test and hold program. We are also concerned about establishments that implement a less than daily (LTD) sanitation program and how those establishments would be expected to lot product. For example, due to time and difficulty involved, some establishments do not completely empty their chiller systems daily and instead have validated LTD sanitation programs in conjunction with FSIS. This facilitates efficient operations and protects the environment by reducing water and chemical use. The environmental impact and resources associated with losing a LTD sanitation program would be significant and must be considered.

Further, to the extent the Agency were considering applying a finished product standard differently based on establishment size or conducting sampling for small or very small establishments, it is unclear how the Agency would take the necessary number of samples and still have remaining lab capacity to complete any verification sampling.

In practice, a standard like that contemplated in Component 3 would impose substantial cost on the industry, would divert tremendous amounts of raw chicken to less-demanded cooking applications (and would overwhelm the already saturated market for cooked chicken as well as capacity to cook it), and ultimately would mean less chicken at higher costs for consumers.

Component 3 Recommendations

NCC strongly opposed Component 3. FSIS lacks statutory authority to implement it, and the proposal raises numerous insurmountable technical issues. Instead, NCC recommends the following for enhancing *Salmonella* control in raw poultry finished products:

1. Conduct an enumerative baseline for *Salmonella* in raw poultry, focusing on different parts and perhaps different end-use applications or differences between slaughter and further processing facilities. Develop robust enumeration data for different parts.
2. Use enumerative baseline data to inform a risk assessment model.
3. Develop an enumerative performance standard to replace the current presence-based performance standard that is focused on specific parts.
4. Enhance labeling and consumer education. NCC has petitioned FSIS multiple times for more robust and modern labeling for certain types of raw poultry, which FSIS has yet to act on.

In particular, NCC believes that an enumerative performance standard would advance FSIS's public health goals in a much simpler and easier-to-implement manner. History has shown that chicken processors will make changes to meet voluntary performance standards. A properly constructed enumerative performance standard would achieve the same objective of driving down levels of *Salmonella* on finished product raw poultry, but with a number of benefits over the proposed Component 3. An enumerative performance standard provides the Agency and establishments with greater flexibility; can be implemented quickly without the need to rely on a novel application of the adulteration standard; is more responsive to existing supply chains and distribution practices; would not require new rapid testing technologies or complex test and hold programs (but the existence of the program would provide demand to spur testing innovation anyway); and would generate valuable long-term data about *Salmonella* levels on finished product. We strongly encourage FSIS to explore this pathway instead of the proposed Component 3, and NCC stands ready to collaborate with FSIS on this approach.

Cross-Cutting Considerations

NCC has feedback on several cross-cutting considerations related to the Proposed Framework.

Developing a Robust Data-Sharing Mechanism is a Critical Prerequisite Step

Throughout our comments, we have expressed concern about the lack of data and scientific analysis supporting the Proposed Framework. Chicken processors collected substantial quantities of data, dwarfing that collected by FSIS through verification and exploratory sampling. For more than a decade, NCC has sought a mechanism to facilitate aggregate data sharing with FSIS. NCC members are interested in developing an appropriate data-sharing process. In particular, NCC urges FSIS to develop a data-sharing framework that is consistent with the Freedom of Information Act exemption (b)(3), either with FSIS or a sister agency within USDA.⁴⁶ This data

⁴⁶ 5 U.S.C. § 552(b)(3).

would provide FSIS with substantially more insight into food safety systems throughout the industry and would facilitate policy development and risk assessment modeling.

Serotype and Virulence-Based Testing is Not Practical with Current Technology

NCC supports efforts to enhance cutting-edge technologies to better understand *Salmonella* risks. Advanced testing technologies such as serotype-specific testing and virulence-based testing show great promise but, as FSIS recognized in the Proposed Framework, will require additional development before they can be used widely and effectively in everyday food processing operations. We encourage FSIS to support the continued development of and innovation with these technologies, but they are not quick, affordable, or available enough to be used widely in food processing operations. Moreover, we encourage FSIS to support further research on virulence factors and how they may impact public health.

The Proposal Risks Significant Disruption to the Industry and Threatens Food Prices for Consumers

Many aspects of the Proposed Framework threaten to drive up costs and cut availability of chicken. This would be an extremely unfortunate outcome, especially in light of recent record across-the-board inflation and the continuing food insecurity afflicting millions of American families. Chicken is American's most affordable and most consumed protein. It is nutritious and versatile, and it is a staple protein for many, and critically for those families trying to make the most out of every food dollar. Moreover, chicken makes up a significant portion of food bank donations and purchases for Federal and state nutrition assistance programs. Aspects of the Proposed Framework threaten to undermine chicken availability.

For example, Component 1 would seem to contemplate entire flocks being turned away from plants before they are even processed. This would have devastating animal welfare implications, and it would reduce the supply of chicken in the market, in turn driving up costs. Likewise, a finished product standard would likely cause substantial amounts of product to be diverted to cooking operations. However, there is limited use and demand for precooked chicken, and that demand is largely saturated. Moreover, there is limited capacity to actually produce cooked chicken. Combined, these factors mean that much of the chicken that FSIS likely anticipates would be diverted to cooking operations would simply be destroyed, again reducing the supply of chicken and driving up costs. It would be most unfortunate for FSIS to choose this moment to worsen food insecurity and to drive up consumer food prices.

Further, the family farmers who raise most of the broiler chickens processed in the United States would be put at great financial risk if FSIS were to subject the marketability of the flocks they raise to a live receiving threshold. It is entirely unclear how FSIS anticipates the threshold affecting farmers, and this change could inject tremendous uncertainty into what has long been a prosperous way to deploy farming capital.

Conclusion

NCC appreciates the opportunity to provide comment on FSIS's Proposed *Salmonella* Framework. NCC member companies share FSIS's goal of reducing *Salmonella* levels on raw chicken and, ultimately, driving down salmonellosis cases. The chicken industry has made tremendous advances in reducing *Salmonella* presence, and the industry continues to drive down *Salmonella*. However, NCC has serious concerns about many aspects of the Proposed Framework. The Proposed Framework contemplates actions that exceed FSIS's statutory authority, that would be extremely difficult and perhaps impossible to implement, and that are not consistent with modern food safety approaches. Moreover, the lack of supporting information and data makes it extremely difficult to meaningfully evaluate and provide feedback on the Proposed Framework. NCC is concerned that policy appears to be getting ahead of the science.

NCC urges FSIS to instead pursue the recommendations made in these comments. The Agency should continue to work closely with all stakeholders through hosting technical meetings prior to the issuance of a proposed rule to ensure the ability for two-way dialogue and the development of the best approach forward based. These recommendations—in particular, conducting additional data gathering and analysis, developing an appropriate industry-agency data sharing protocol, and developing an enumerated performance standard—would significantly advance public health objectives while avoiding many of the complications, uncertainties, and costs raised by the Proposed Framework.

Please feel free to contact us with any questions regarding the above request.
Thank you for your consideration.

Respectfully submitted,



ASHLEY B. PETERSON, PH.D.,
Senior Vice President, Scientific and Regulatory Affairs,
National Chicken Council.

EXHIBIT 6: NCC PETITION REGARDING NRTE STUFFED CHICKEN BREAST PRODUCTS
(FEB. 25, 2022)

February 25, 2022

Submitted electronically via regulations.gov

FSIS *Docket Clerk*,
Food Safety and Inspection Service,
U.S. Department of Agriculture,
Washington, DC

**Re: Petition to Establish Regulations for the Labeling and Validated
Cooking Instructions for Not-Ready-to-Eat Stuffed Chicken Breast
Products That Appear Ready-to-Eat**

Dear Docket Clerk:

The National Chicken Council (NCC) respectfully submits this supplement updating our 2016 petition requesting that the Food Safety and Inspection Service (FSIS) adopt regulations establishing labeling requirements for not-ready-to-eat (NRTE) stuffed chicken breast products that may appear ready-to-eat (RTE) and to issue a Compliance Guideline for developing and communicating validated cooking instructions for such products. NCC first filed this petition on May 24, 2016 (*Attachment 1*). This supplement updates the 2016 petition to reflect updates in [] collective understanding of these products. Information presented in this supplement should be read cumulatively with our 2016 petition, except that the requested language amending FSIS's regulations identified in our 2016 petition should be replaced with the language provided in this supplemental letter.

NCC remains is aware that some consumers may be uncertain of the proper handling and cooking methods for NRTE stuffed chicken breast products that may appear RTE, and the proposed measures are necessary to ensure proper handling and cooking of these products. FSIS has demonstrated that adding information to labels, such as warning statements and validated cooking instructions, is the appropriate way to address products when the Agency believes that consumers may need additional information to ensure they are consuming the product safely. We agree with this approach.

NCC has long advocated for additional labeling to address consumer confusion related to these products and has worked with its members to develop guidelines for such labels. This labeling would clearly inform consumers that these products are raw and require proper cooking while providing specific and uniform instructions on how to cook the products. NCC has drafted proposed regulatory text establishing the language and prominence requirements that have been shown to be effective in increasing consumer perception and understanding of warning statements. NCC is confident that these proposed labeling regulations would inform consumers are appropriately informed that NRTE stuffed chicken breast products that may appear RTE are raw and must be handled properly and cooked for safety. An FSIS Compliance Guideline on validating cooking instructions for these products also would reinforce these efforts by ensuring that these products are safe to consume when cooked in accordance with the instructions provided and that cooking instructions can be easily replicated by consumers.

Further, FSIS conducted a Food Safety Consumer Research Project titled "Meal Preparation Experiment on Raw Stuffed Chicken Breasts," which was published in September of 2020.

According to the results, consumers often do not pay attention to safe handling instructions required by regulations, yet they are more likely to look at the manufacturer's cooking instructions. Nearly all participants in this study reported reading the instructions on the package and the majority of participants believed that the product was raw or partially cooked. Given these findings, it is of [utmost] impor-

tance that labels are clear and provide appropriate information and instructions on how to properly cook these products.

The National Advisory Committee on Meat and Poultry Inspection (NACMPI) held a public meeting in September 2021 and specifically discussed these NRTE stuffed chicken breast products that may appear RTE. The subcommittee was charged with the following questions:

1. Given FSIS' consumer research findings and an open multi-state *Salmonella Enteritidis* illness outbreak, should FSIS re-verify that companies continue to voluntarily label these products as raw in several places on the label and include validated cooking instructions?
2. What, if any, actions can FSIS take to prevent and reduce illnesses associated with the handling or consumption of these NRTE products? For example, should FSIS:
 - a. Conduct exploratory sampling for pathogens and/or indicator organisms in these and other similar raw, stuffed or non-stuffed partially processed products?
 - b. Require establishments to apply a lethality treatment to ensure that all products are RTE?
 - c. Sample these products for *Salmonella* because consumers customarily undercook them?
 - d. Require establishments that produce these products to reassess their HACCP plans, in light of outbreak data?
 - e. Conduct targeted consumer outreach? If so, please provide some ideas on the best approaches.

The NACMPI subcommittee concluded, in summary, that FSIS should reverify the labeling and validated cooking instructions for these products. In addition, it was recommended that labels should include language warning consumers not to use microwaves or air fryers if validated cooking instructions are not provided for these methods and cooking the product to a minimum of 165 °F as measured using a meat thermometer. Moreover, the subcommittee discussed the NCC petition submitted in 2016 and recommended adoption of mandatory labeling requirements for this product category and that FSIS publish a compliance guide on validated cooking instructions for these products.

For these reasons, NCC maintains and requests that the Agency take the following actions:

1. Conduct a rulemaking to adopt a regulation requiring that NRTE stuffed chicken breast products that appear RTE be labeled to clearly inform consumers that the products are raw and how to properly handle and cook them, as proposed below; and
2. Publish a Compliance Guideline explaining how to validate cooking instructions for NRTE stuffed chicken breast products that appear RTE, which incorporates NCC's "Best Practices for Cooking Instruction Validation for Frozen NRTE Stuffed Chicken Breast Products." (*Attachment 2—NCC Best Practices*).*

Specifically, NCC requests that FSIS amend Part 381 of Title 9 of the Code of Federal Regulations to add a new subsection (c) to Section 381.125, to read as follows:

(c)(1) Definition. For purposes of this section, the term "not-ready-to-eat (NRTE) stuffed chicken breast product that appears ready-to-eat (RTE)" means a non-homogenous product that contains raw, comminuted chicken breast meat, which has been heat-treated only to set the batter or breading but has not received a full lethality treatment; which has an RTE appearance such as a set or hardened breaded crust or grill marks; and which has an inner cavity filled with ingredients, including, but not limited to, raw vegetables, butter, cheese, or meat. NRTE stuffed chicken breast products that appear RTE do not include the following products, among others: par-fried products such as chicken nuggets or chicken tenders unless they have been stuffed; or stuffed products such as whole stuffed chickens, or chicken thighs stuffed with stuffing and almonds, which do not appear RTE.

* **Editor's note:** the document referred to follows as *Attachment 1* to the May 24, 2016 letter, located on p. 165.

(2) **Product Name.** Unless the product is destined to be fully cooked or to receive a full lethality treatment at an official establishment or at a foreign establishment certified by a foreign government found equivalent under Section 196 of this Part, the product name for a NRTE stuffed chicken breast product that appears RTE must contain:

- (i) the term “raw” as a descriptive designation; and
- (ii) an accurate description of the poultry component (*e.g.*, “Raw Stuffed Chicken Breast” or “Raw Chicken with Broccoli and Cheese”).

(3) **Required labeling to signal the product is raw.** The principal display panel of NRTE stuffed chicken breast product that appears RTE and is destined for household consumers (not for hotels, restaurants, or similar institutions) must bear:

- (i) the following safety statement:

“RAW PRODUCT. For food safety, cook to a minimum internal temperature of 165 °F measured by a meat thermometer.”

(A) Such that the word “RAW” may be used in lieu of the term “RAW PRODUCT”;

(B) With the words “RAW” or “RAW PRODUCT” capitalized and in a minimum type height of $\frac{1}{4}$ ”; and

(C) With the statement “For food safety, cook to a minimum internal temperature of 165 °F measured by a meat thermometer” capitalized or in a combination of upper and lowercase letters, with the letter height of the capitalized letters at least $\frac{1}{2}$ the height of the words “RAW” or “RAW PRODUCT”; and

(D) With the statement appearing on a solid color background that contrasts with the text and the portion of the label on which it appears. Either the text color or the background color must be red in color, but not both.

- (ii) a “raw chicken” icon, which must be prominent, conspicuous, and legible; comprise at least 5% of the principal display panel in area; contain the statement “RAW CHICKEN” in all capital letters; and include:

(A) The statement “Do Not Microwave” accompanied by an illustration of a microwave enclosed in a red circle, square, or rectangle with a red line across it; and

(B) The statement “Oven Bake Only” which should appear written across the door of an illustration of an oven enclosed in a green circle, square, or rectangle; and

(C) The statement “Do Not Air Fry” with an illustration of an air fryer enclosed in a red circle, square, or rectangle with a red line across it.

- (iii) a serving suggestion notice explaining that the label illustrates the suggested serving of the product after baking, if the label contains an illustration of the cooked product (*e.g.*, “serving suggestion after oven baking” or “serving suggestion: photo shows product after oven baking”). The serving suggestion notice, if used, must:

(A) Appear in red, bold text with at least $\frac{1}{8}$ ” size font height; and

(B) Appear on a solid color contrasting background.

(4) **Validated cooking instructions.** The labels on NRTE stuffed chicken breast products that appear RTE destined for household consumers must contain validated cooking instructions. The validated cooking instructions may appear anywhere on the label and must contain all information necessary to instruct consumers how to cook the product safely. Such information shall include, at a minimum:

- (i) The proper cooking method;
- (ii) The endpoint temperature;
- (iii) Instructions to measure the internal temperature using a meat thermometer;
- (iv) The “Do Not Microwave” icon with an illustration of a microwave enclosed in a red circle, square, or rectangle with a red line across it;
- (v) The “Oven Bake Only” icon with an illustration of an oven enclosed in a green circle, square, or rectangle;

(vi) The “Do Not Air Fry” icon with an illustration of an air fryer enclosed in a red circle, square, or rectangle with a red line across it;

(vii) A website URL, QR code, or similar mechanism that takes the consumer to a webpage or similar openly accessible platform that includes a video demonstrating proper cooking methods, which shall be placed near the written cooking instructions;

(viii) The statement “Raw Chicken—Do Not Microwave” in at least $\frac{3}{16}$ ” font followed by the explanation “to help prevent foodborne illness caused by eating raw poultry” in at least $\frac{1}{16}$ ” font; and

(ix) Any additional statements or illustrations, as appropriate, to inform the consumer that the product is raw and must be cooked in an oven to ensure product safety.

(x) The cooking instructions and icons identified in subparagraphs (i) through (ix) must be placed on a solid color background in a contrasting color to the text.

(5) Additional Validated Cooking Methods. The elements identified in paragraphs (3)(ii)(A)–(C) and (4)(iv)–(vi) and (4)(viii) may be modified to reflect any additional validated cooking instructions provided on the label. For example, if a label for an NRTE stuffed chicken breast product that appears RTE destined for household consumers contains validated cooking instructions for air frying, the “Do Not Air Fry” elements otherwise required in paragraphs (3)(ii)(C) and (4)(vi) may be omitted, and the element required in paragraphs (3)(ii)(B) and (4)(v) may be modified to say “Oven Bake or Air Fry Only.”

In conclusion, NCC believes it is necessary that the Agency adopt these proposed regulations to require that the labels of NRTE stuffed chicken breast products that may appear RTE adequately indicate to consumers that these products are raw and must be prepared according to the validated cooking instructions provided to ensure the product safety. A corresponding FSIS Compliance Guideline incorporating NCC’s Best Practices for validating cooking instructions will also provide industry with the guidance needed to ensure its instructions are effective and consistent with typical consumer use. NCC believes these requests complement the FSIS consumer research published in September 2020 and the recommendations set forth by the NACMPI Subcommittee in September 2021.

Thank you for your consideration of this updated petition. Please do not hesitate to contact me if I can provide any additional information.

Respectfully submitted,



ASHLEY B. PETERSON, PH.D.,
Senior Vice President, *Scientific and Regulatory Affairs*.
National Chicken Council.

cc:

SANDRA ESKIN, *Deputy Under Secretary for Food Safety*

PAUL KIECKER, *FSIS Administrator*

RACHEL EDELSTEIN, *Assistant Administrator, Office of Policy and Program Development*

ROSALYN MURPHY-JENKINS, *Director, Labeling and Program Delivery Division*

ATTACHMENT 1—NCC 2016 PETITION

May 24, 2016

Submitted electronically via regulations.gov

FSIS *Docket Clerk*,
Food Safety and Inspection Service,
U.S. Department of Agriculture,
Washington, DC

Re: Petition to Establish Regulations for the Labeling and Validated Cooking Instructions for Not-Ready-to-Eat Stuffed Chicken Breast Products That Appear Ready-to-Eat

Dear Docket Clerk:

The National Chicken Council (NCC) respectfully submits this petition requesting that the Food Safety and Inspection Service (FSIS) adopt regulations establishing labeling requirements for not-ready-to-eat (NRTE) stuffed chicken breast products

that may appear ready-to-eat (RTE) and to issue a Compliance Guideline for developing and communicating validated cooking instructions for such products. NCC increasingly is aware that some consumers may be uncertain of the proper handling and cooking methods for NRTE stuffed chicken breast products that may appear RTE, and the proposed measures are necessary to ensure proper handling and cooking of these products. As evidenced in FSIS's recent rule requiring labeling of mechanically tenderized beef products, FSIS takes the view that adding to labels warning statements and validated cooking instructions is the appropriate way to address products when the Agency believes that consumers may need additional information to ensure they are consuming the product safely. Our request is consistent with—and indeed extends beyond—FSIS's policy toward labeling of mechanically tenderized beef.

NCC has long advocated for additional labeling to address consumer confusion related to these products and has worked with its members to develop guidelines for such labels. This labeling would clearly inform consumers that these products are raw and require proper cooking while providing specific and uniform instructions on how to cook the products. Drawing upon our members' insights and consumer perception testing, we have drafted proposed regulations establishing the language and prominence requirements that have been shown to be effective in increasing consumer perception and understanding of warning statements. NCC is confident that these proposed labeling regulations would make certain that consumers are appropriately informed that NRTE stuffed chicken breast products that may appear RTE are raw and must be handled properly and cooked for safety. An FSIS Compliance Guideline on validating cooking instructions for these products also will ensure that these products are safe to consume when cooked in accordance with the instructions provided and that cooking instructions can be easily replicated by consumers.

I. Requested Actions

NCC requests that the Agency take the following actions:

1. Conduct a rulemaking to adopt a regulation requiring that NRTE stuffed chicken breast products that appear RTE be labeled to clearly inform consumers that the products are raw and how to properly handle and cook them, as proposed below; and
2. Publish a Compliance Guideline explaining how to validate cooking instructions for NRTE stuffed chicken breast products that appear RTE, which incorporates NCC's "Best Practices for Cooking Instruction Validation for Frozen NRTE Stuffed Chicken Breast Products." (*Attachment 1—NCC Best Practices.*)

The requested regulations and Compliance Guideline would work in tandem. The regulations would require that the products bear validated cooking instructions and establish required uniform label statements necessary to inform consumers that the products are raw and must be prepared according to the cooking instructions provided to ensure food safety. The Compliance Guideline would assist industry in validating cooking instructions to comply with the regulation and identify any additional statements that should accompany the validated cooking instructions to reinforce for consumers that they must cook the product in an oven, not a microwave, to prevent foodborne illness.

Specifically, we request that FSIS amend Part 381 of Title 9 of the Code of Federal Regulations to add a new subsection (c) to Section 381.125, to read as follows:

(c)(1) Definition. For purposes of this section, the term "not-ready-to-eat (NRTE) stuffed chicken breast product that appears ready-to-eat (RTE)" means a non-homogenous product that contains raw, comminuted chicken breast meat, which has been heat-treated only to set the batter or breading but has not received a full lethality treatment; which has an RTE appearance such as a set or hardened breaded crust or grill marks; and which has an inner cavity filled with ingredients, including, but not limited to, raw vegetables, butter, cheese, or meat. NRTE stuffed chicken breast products that appear RTE do not include the following products, among others: par-fried products such as chicken nuggets or chicken tenders unless they have been stuffed; or stuffed products such as whole stuffed chickens, or chicken thighs stuffed with stuffing and almonds, which do not appear RTE.

(2) Product Name. Unless the product is destined to be fully cooked or to receive a full lethality treatment at an official establishment or at a foreign establishment certified by a foreign government found equivalent under Section 196 of this Part, the product name for a NRTE stuffed chicken breast product that appears RTE must contain:

- (i) the term “raw” as a descriptive designation; and
- (ii) an accurate description of the poultry component (*e.g.*, “Raw Stuffed Chicken Breast” or “Raw Chicken with Broccoli and Cheese”).

(3) **Required labeling to signal product is raw.** The principal display panel of NRTE stuffed chicken breast product that appears RTE and is destined for household consumers (not for hotels, restaurants, or similar institutions) must bear:

- (i) the following safety statement:
 - “RAW PRODUCT. For food safety, cook to a minimum internal temperature of 165 °F measured by a meat thermometer.”
 - (A) such that the word “RAW” may be used in lieu of the term “RAW PRODUCT”;
 - (B) with the words “RAW” or “RAW PRODUCT” capitalized and in a minimum type height of $\frac{1}{4}$ ”; and
 - (C) with the statement “For food safety, cook to a minimum internal temperature of 165 °F measured by a meat thermometer” capitalized or in a combination of upper and lowercase letters, with the letter height of the capitalized letters at least $\frac{1}{2}$ the height of the words “RAW” or “RAW PRODUCT”;
 - (ii) a “raw chicken” icon, which must be prominent, conspicuous, and legible; contain the statement “RAW CHICKEN” in all capital letters; and include:
 - (A) the statement “Do Not Microwave” above an illustration of a microwave enclosed in a circle with a line across it; and
 - (B) the statement “Oven Bake Only”, which should appear written across the door of an illustration of an oven; and
 - (iii) a serving suggestion notice explaining that the label illustrates the suggested serving of the product after baking, if the label contains an illustration of the cooked product (*e.g.*, “serving suggestion after baking” or “serving suggestion: photo shows product after oven baking”).

(4) **Validated cooking instructions.** The labels on NRTE stuffed chicken breast products that appear RTE destined for household consumers must contain validated cooking instructions. The validated cooking instructions may appear anywhere on the label and must contain all information necessary to instruct consumers how to cook the product safely. Such information shall include, at a minimum:

- (i) the proper cooking method;
- (ii) the endpoint temperature;
- (iii) instructions to measure the internal temperature using a meat thermometer;
- (iv) the “Do Not Microwave” icon;
- (v) the “Oven Bake Only” icon;
- (vi) the statement “Raw—Do Not Microwave” in at least $\frac{3}{16}$ ” font followed by the explanation “to help prevent foodborne illness caused by eating raw poultry” in at least $\frac{1}{16}$ ” font; and
- (vii) any additional statements or illustrations, as appropriate, to inform the consumer that the product is raw and must be cooked in an oven to ensure product safety.

II. Support for Requested Actions

We are becoming increasingly aware that some consumers may not know how to properly recognize and prepare NRTE stuffed chicken breast products that may appear RTE. NCC’s proposed regulations and corresponding Compliance Guideline would draw consumers’ attention to the fact that these products are raw and must be handled accordingly while ensuring that cooking instructions are properly validated to achieve lethality for food safety.

A. Need for Increased Consumer Awareness Regarding NRTE Foods that Appear RTE

NCC member companies strive to produce safe, wholesome products for their consumers to enjoy. As with any raw product, though, consumers are the last line of defense in food safety. No matter how safe a product is, improper handling or cooking may nevertheless render the product unsafe for consumption. Ensuring consumer understanding of proper handling and preparation methods therefore is a

vital component of preventing foodborne illness. In the ongoing endeavor to maintain consumer awareness of food safety procedures, NRTE stuffed chicken breast products that may appear RTE present a unique challenge.

NCC understands that some consumers currently may be uncertain of the correct handling and cooking methods for NRTE stuffed chicken breast products that may appear RTE, and further efforts are necessary to ensure that all consumers appreciate the raw nature of these products and the need to cook them for food safety. NCC understands that the labeling, cooked appearance, and often frozen state of these products can sometimes be confusing to consumers, who may believe that the products are fully cooked. As a result, some consumers may only reheat the product for aesthetics or palatability instead of cooking the product to the internal temperature needed to destroy pathogenic bacteria, even when the cooking instructions tell them to do so.

FSIS also is aware of this issue and, following recalls associated with similar products, has advised manufacturers of NRTE breaded chicken breast products that may appear RTE of the need to emphasize to consumers that these products are not cooked.

Thus, there is consensus that clear and uniform labeling is required to ensure consumers understand the proper handling and cooking procedures for NRTE breaded chicken breast products that may appear RTE.

B. Label Warnings, Statements, and Validated Cooking Instructions to Inform Consumers and Ensure Product Safety

NCC believes that mandatory labeling and the use of validated cooking instructions are the best options for equipping consumers to handle and prepare these products safely. In a report to FSIS, the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) similarly recommended that products that contain uncooked poultry but appear cooked should explicitly state on the label that the product contains raw poultry and must be cooked thoroughly.¹ The National Advisory Committee on Meat and Poultry Inspection (NACMPI) also recently concluded that there should be mandatory label statements for NRTE products that appear RTE and that FSIS should require these products to bear validated cooking instructions.² NACMPI also suggested that a standard of identity for these products may be appropriate.

A Federal regulation defining this category of products and prescribing appropriate and uniform warning statements will ensure that label statements are consistent, so as to avoid further consumer confusion, and effective at alerting consumers to the raw nature of these products. In addition, a mandate that these products bear validated cooking instructions will ensure that the preparation instructions provided on the label can achieve the necessary level of lethality in a manner that can be replicated by consumers.

III. Explanation of Proposed Regulations and Compliance Guideline

NCC proposes to amend FSIS's existing regulation for special handling labeling requirements at 9 CFR § 381.125 to include labeling requirements for NRTE stuffed chicken breast products that may appear RTE. Below we describe the components of the proposed regulation and explain how each provision will increase consumer awareness and improve product safety. We also discuss how NCC's proposed Compliance Guideline will elaborate upon the regulation while allowing for the flexibility needed for this type of product category.

A. Definition of NRTE Stuffed Chicken Breast Product That Appears RTE

As noted above, the challenge of consumer awareness is limited to a narrow category of products—NRTE stuffed chicken breast products that may appear RTE. It therefore is necessary to define this term carefully to ensure that it covers all products for which additional warning statements and validated cooking instructions are needed to address consumer confusion, but does not capture products for which this unique safety issue does not exist.

¹NACMCF also recommended that such statements related to safety information should appear on the principal display panel. NACMCF, *Response to the Questions Posed by the Food Safety and Inspection Service Regarding Consumer Guidelines for the Safe Cooking of Poultry Products* (Mar. 2006), available at http://www.fsis.usda.gov/shared/PDF/NACMCF_Report_Safe_Cooking_Poultry_032406.pdf?redirecthttp=true.

²NACMPI, *Subcommittee #2 Consideration of Mandatory Labeling Features for Certain Processed Not Ready to Eat Meat and Poultry Products* (Apr. 2016) (hereinafter "NACMPI Report"), available at <http://www.fsis.usda.gov/wps/wcm/connect/076f154b-6744-41ef-bc27-7282bee0dfce/NRTELabeling.pdf?MOD=AJPERES>.

NCC's proposed definition of "NRTE stuffed chicken breast products that appear RTE" is based upon FSIS's description of these products in Notice 15–16.³ This category of products contains raw, comminuted chicken breast meat, which has been heat-treated only to set the batter or breading, which has an RTE appearance, and which is stuffed with ingredients such as raw vegetables, butter, cheese, meat, or other fillings. The proposed definition is limited exclusively to retail products because we understand that the awareness issues related to these products do not extend to hotels, restaurants, and institutional users, who recognize these products as being raw and are able to handle them properly.

The term "stuffed chicken breast product" means a product consisting of comminuted chicken breast with an inner cavity that has been filled with additional ingredients, thereby creating two, non-homogenous layers with different densities. The different densities affect thermal transfer, which may contribute to consumer challenges in understanding how to cook these products. It does not refer to homogenous blends or mixtures of comminuted chicken breast and other ingredients. Thus, a comminuted chicken breast product that contains an inner pocket filled with broccoli and cheese would fall under the proposed definition, whereas a mixture of comminuted chicken breast, broccoli, and cheese would not. A product "appears RTE" if it has not undergone a validated lethality step, but has been battered or breaded and then par-fried to set the crust; contains grill marks; or has been colored to create the appearance that the product has been cooked.

NCC agrees with FSIS that this category of products includes items such as breaded, pre-browned chicken cordon bleu, chicken Kiev, and chicken stuffed with broccoli and cheese. NCC also agrees with FSIS's determination that this category does not include par-fried products such as chicken nuggets or chicken tenders unless they have been stuffed or other types of stuffed products such as turducken, whole stuffed chickens, or chicken thighs stuffed with stuffing and almonds, which do not appear RTE. More generally, the term does not refer to stuffed whole muscle cuts.

B. Required Product Name, Warnings, and Statements

The proposed regulations mandating label warning statements for NRTE breaded chicken breast products that appear RTE will increase consumer awareness by providing clear statements conveying that the product is raw and must be cooked and by ensuring that this information is sufficiently prominent for consumers to read it. NCC research confirms that use of the proposed label statements, along with the prescribed prominence requirements, will increase consumer understanding that these products are raw. (*Attachment 2—NCC Consumer Perception Research.*) NCC's proposal also is consistent with the principles FSIS has identified for effective product warnings, and in many aspects goes beyond the measures FSIS has recommended.⁴

The proposed regulations would require labels for these products to bear the statement "RAW PRODUCT. For food safety, cook to a minimum internal temperature of 165 °F measured by a meat thermometer." This proposed statement includes the three elements FSIS has identified as necessary to communicate effectively the proper handling and cooking procedures for these products: (1) the term "RAW PRODUCT" (or "RAW"), which reflects that the product is NRTE; (2) the specific endpoint internal temperature of 165 °F; and (3) a direction to measure the endpoint temperature using a meat thermometer.⁵ This statement, which must appear in all capital letters at least 1/4" in height on the principal display panel (PDP), will help consumers understand that it is important for them to follow the cooking instructions provided.

The proposed regulations also would require several other components to appear on the PDP, which NCC research has found will reinforce the raw state of these products. First, the word "raw" would be required to be included as a descriptive designation in the product name. Second, a "raw chicken" icon would be required to appear on the label with corresponding "do not microwave" and "oven bake only" illustrations. Repeating the word "raw" on the label, as these requirements would achieve, is important because NCC's research concluded that multiple placements of the word "raw" nearly doubles the percentage of individuals who notice the term. The oven symbol also reinforces the raw state of the product and how it should be

³ FSIS Notice 15–16, *Profile Update in Establishments that Produce Not-Read-to-Eat Stuffed Chicken Breast Products that Appear Ready-to-Eat* (Feb. 18, 2016).

⁴ E.g., FSIS, *Labeling Policy Guidance: Uncooked, Breaded Boneless Poultry Products* (Jan. 2007), available at http://www.fsis.usda.gov/wps/wcm/connect/16d7b7f70-e11b-4861-ade86f3269c3eeec/Labeling_Policy_Guidance_Uncooked_Breaded_Boneless_Poultry_Products.pdf?MOD=AJPERES.

⁵ See *id.*

cooked. Third, the PDP must include a serving suggestion notice explaining that the label illustrates the suggested serving of the product after baking if the label contains an illustration of the cooked product. This statement will prevent consumers from assuming based on the illustration of the cooked product on the label that the product is RTE.

In addition, the regulations would prescribe the warnings and statements that must be included as part of the validated cooking instructions. These required warnings and statements—a statement that the product is raw, the minimum internal temperature, instructions to measure the temperature using a thermometer, a warning not to microwave the product to help prevent foodborne illness, and the “do not microwave” and “oven bake only” illustrations—are the same or similar to those required to appear on the PDP. This repetition of key words and statements will help reinforce the key messages that the product is raw and must be cooked for food safety.

Requiring that these warnings statements accompany validated cooking instructions would be consistent with NACMPI’s recommendations, which suggested that validated cooking instructions should include a disclaimer not to use a microwave and should make clear which steps should be followed for safety.⁶ NCC also envisions that FSIS, through its Compliance Guideline on validating cooking instructions, or an establishment based on its experience, may identify additional warnings or statements that would be appropriate to include in the validated cooking instructions. NCC accounted for these additional statements by requiring that the instructions include “any additional statements or illustrations, as appropriate, to inform the consumer that the product is raw and must be cooked in an oven to ensure product safety.”

NCC research demonstrates that the proposed label regulations would be successful in increasing consumer awareness that these products contain raw poultry and must be cooked for safety. It is necessary for FSIS to adopt these proposals via mandatory regulation, both to ensure that products bear consistent and uniform language and display methods that have been proven effective and to avoid inconsistent messaging that may cause further consumer confusion.

C. Validated Cooking Instructions and Corresponding Compliance Guideline

NCC agrees with FSIS that the cooking instructions for NRTE stuffed chicken breast products that appear RTE must be validated, and the proposed regulations include a requirement that the products bear validated cooking instructions. This requirement will ensure that labeled cooking instructions will achieve lethality.

To accompany the regulation, we request FSIS issue a Compliance Guideline instructing industry on how to validate cooking instructions for NRTE stuffed chicken breast products that may appear RTE, consistent with the regulation. A corresponding Compliance Guideline would be appropriate because it would provide establishments with firm, clear guidance to follow to ensure cooking instructions are accurate and consumers can replicate them effectively. Based on the Agency’s approach toward cooking instructions in other contexts, NCC proposes that FSIS include in the regulations a general requirement to provide validated cooking instructions while also maintaining more detailed recommendations for validation through a Compliance Guideline. This method has been effective in analogous situations that warranted providing flexible general parameters for validation that could be adapted to specific products,⁷ and NCC believes it would be appropriate in this instance as well.

FSIS’s Compliance Guideline should incorporate NCC’s *Best Practices for Cooking Instruction Validation for Frozen NRTE Stuffed Chicken Products* (“Best Practices”), which are consistent with and expand upon FSIS’s recommendations for validation.⁸ NCC agrees with FSIS that microwave cooking may result in inconsistencies and, as described above, supports label statements that discourage consumers from

⁶ See NACMPI Report, *supra* note 2.

⁷ For example, FSIS requires that mechanically tenderized beef bear validated cooking instructions, 9 CFR 317.2(e)(3), and the Agency issued a separate Compliance Guideline for the validation of the instructions, FSIS, *Compliance Guideline for Validating Cooking Instructions for Mechanically Tenderized Beef Products* (2015). Similarly, FSIS requires inspected establishments to prepare validated Hazard Analysis and Critical Control Points (HACCP) plans, 9 CFR 417.2, 417.4, and maintains a Compliance Guideline to assist establishments in validating their HACCP plans in compliance with the regulation. FSIS, *Compliance Guideline HACCP Systems Validation* (April 2015).

⁸ FSIS, *Information on Validation of Labeled Cooking Instructions for Products Containing Raw or Partially Cooked Poultry*, available at <http://1.usa.gov/23JFeIe>.

microwaving these products.⁹ Because NCC discourages microwave preparation, our Best Practices are limited to validating cooking instructions for oven preparation, and are further limited to gas and electric-style ovens for retail portions. Like FSIS's recommendations, the Best Practices also state that validated cooking instructions must result in all product sizes and varieties reaching an internal temperature of 165 °F and must be consistent with consumer use.

NCC's Best Practices include a number of other suggestions beyond FSIS's recommendations that will improve the specificity of cooking instructions and increase the ease in which consumers can replicate the preparation methods. In particular, the Best Practices advise that cooking instructions for each product should include guidance for the appropriate metal cooking utensil to support consistent cooking results, appropriate product spacing to support even heating of the product, and the standard placement of the product in the oven, all of which should be validated accordingly. To maximize the efficacy and repeatability of the validation process, NCC also recommends that product and testing ovens be prepared for cooking and validation in a manner that is consistent with consumer use.

NCC's request that FSIS issue a Compliance Guideline incorporating NCC's Best Practices for cooking instruction validation goes hand-in-hand with our proposed label regulations for NRTE stuffed chicken breast products that appear RTE. Industry must alert consumers to the raw state of these products and instruct consumers on the proper method for preparing the products to achieve lethality. An FSIS Compliance Guideline adopting NCC's Best Practices will not only ensure that the cooking instructions provided achieve the necessary level of lethality, but also that they are understandable and easily replicable by consumers.

Conclusion

For these reasons, NCC believes it is necessary that the Agency adopt these proposed regulations to require that the labels of NRTE stuffed chicken breast products that may appear RTE adequately indicate to consumers that these products are raw and must be prepared according to the validated cooking instructions provided to ensure the product safety. A corresponding FSIS Compliance Guideline incorporating NCC's Best Practices for validating cooking instructions also will provide industry with the guidance needed to ensure its instructions are effective and consistent with typical consumer use. If adopted, NCC's proposals will reinforce the safety of these popular consumer products.

Thank you for your consideration of this petition. Please do not hesitate to contact me if I can provide any additional information.

Respectfully submitted,



MICHAEL J. BROWN,
President.

cc:

Mr. ALFRED ALMANZA, *Deputy Under Secretary for Food Safety*
DANIEL L. ENGELJOHN, PH.D., *Assistant Administrator, Office of Policy and Program Development*

ROSALYN MURPHY-JENKINS, *Director, Labeling and Program Delivery Division*

ATTACHMENT 1—BEST PRACTICES FOR COOKING INSTRUCTION VALIDATION FOR FROZEN NRTE STUFFED CHICKEN PRODUCTS

Introduction:

An industry group was formed to identify and develop a document of recommended Best Practices for the validation of cooking instructions and labeling for products that are classified as “frozen not-ready-to-eat (NRTE) stuffed poultry that appears ready-to-eat (RTE)”.

This Best Practices document is meant to serve as a set of voluntary guidelines which may be used by industry to develop company-specific cooking validation programs. These guidelines were developed to include procedures that companies can consider adopting to ensure product safety and quality. The following recommended Best Practices apply exclusively to frozen NRTE stuffed chicken products.

⁹NCC would encourage FSIS to revisit this issue should a new cooking technology become available that allows consumers to safely cook these products using an appliance other than an oven.

Cooking Validation Protocols:

Manufacturers of frozen NRTE stuffed chicken products design a variety of entrees to appeal to the varying tastes of their consumers, and, as a result, there may be differences in how to properly cook these products. The manufacturers of these products believe that it is in the best interest of the industry to develop some general parameters for developing cooking validation protocols for each product to ensure high food safety and quality.

The following voluntary guidelines are intended to be used to develop thorough cooking validation measures exclusively for frozen NRTE stuffed chicken products.

General Parameters:

1. Cooking instructions should be developed for each size and variety of stuffed entree product. Each variety and size should be validated in portion sets consistent with or greater than package labeling for the tested product (*e.g.*, 2, 4, 6, *etc.* portions).
2. Cooking validations should be done with sufficient replication to account for variability of cooking and to ensure consistency of product temperature and quality.
3. Retail portions should be cooked in a retail gas or electric style oven, as these appliances will be used by the consumers.
4. Each portion must reach an internal temperature of 165 °F at each point measured on the product to be considered effectively cooked.
 - a. Product mapping should be carried out to identify the location(s) of the lowest product temperature after being cooked (*e.g.*, top center, middle center, or bottom center).
5. During the validation procedure, the average operating temperature of the oven used should be at or below target temperature indicated on cooking instructions for the replica set to allow for the safest development of cooking instructions for the consumer.
6. Cooking instructions for each product should include, but is not limited to, guidance for:
 - a. The appropriate metal cooking utensil (*e.g.*, metal baking pan, tray, or sheet) for the given product to support consistent cooking results. The cooking utensil used should be the specified utensil on the packaging instructions for the product, and should be validated accordingly.
 - b. The appropriate product spacing on the specified cooking utensil to support even heating of the product. Information on spacing must be on the packaging instructions for the product and that spacing should be validated accordingly.
 - c. The standard placement of the product in the oven is on the center rack. Products should be validated following this standard.

Equipment/Utensils:

The use of the following cooking equipment and utensils is recommended for optimal product cooking validation and consistency:

1. Two thermometers: one thermometer will measure the internal temperature of the testing oven, and one will measure predetermined points on each product portion. These should be calibrated on the same day as the cooking validation testing.
2. Data loggers, if used, can track temperature measurements taken throughout cooking validation testing. These should be calibrated and certified based on National Institute of Standards and Technology (NIST) standards within 1 year of testing.
3. Scales for weighing each product portion. These should be calibrated on the same day as cooking validation testing.
4. The metal cooking utensil (*e.g.*, metal baking pan, tray, or sheet) recommended on the package cooking instructions for each product should be used during the validation process to ensure optimal product cooking consistency and completeness.

Oven Preparation:

Testing ovens should be prepared for cooking validation in a manner that is consistent with consumer use and which will maximize the efficacy and repeatability of the validation process:

1. Personnel should ensure that the rack intended to be used for cooking validation is positioned in the middle of the testing oven. The center rack of the oven has been determined to be the easiest location for the consumer to use while providing the maximum available heat distribution for the product.
2. The testing oven should be pre-heated to the set point specified by the product cooking instructions, which will be based on the size, quantity, and variety of product to be tested.
3. The testing oven should be pre-heated using a calibrated thermometer or using a data logger to observe that the oven has reached the specific set point indicated in the package cooking instructions prior to cooking validation.

Product Preparation:

It is important to prepare the product in a way that will be consistent with consumer use and which will maximize the efficacy and repeatability of the cooking validation process. The following guidelines are suggested to ensure accurate cooking validation results:

1. Each product portion must be ≤ 5 °F prior to cooking to ensure consistency of cooking validation results and testing parameters. This should be verified prior to cooking validation testing by measuring the temperature of each product portion **or** confirming a documented correlation of product portion temperature to the freezer storage temperature.
2. Product must be verified to be within design specifications at the production plant. If a company determines a product to be out of design specification in the production plant, the company will take appropriate steps to apply alternative validated cooking instructions to the product that is out of design specification.
3. Each portion should be placed on a metal cooking utensil (e.g., metal baking pan, tray, or sheet) with predetermined spacing provided between each portion consistent with packaging instructions for the product.
4. The product portions should be placed in the preheated oven as soon as possible after the product has been removed from the freezer and the metrics have been documented to prevent tempering during the preparation process.

Product Cooking:

It is important that product cooking during testing reflects the instructions that are supplied to the consumer for use. The following are general Best Practices for cooking NRTE products:

1. The minimum required cooking time and temperature should be determined for each labeled portion size.
2. The product portions should be placed on the center rack in the middle of the oven to allow for adequate and even heating of each product portion. This is the location that is recommended to consumers when cooking frozen NRTE stuffed chicken products.
3. The product portions will be appropriately spaced on the metal cooking utensil in accordance with the cooking instructions provided with the NRTE product.

Oven Monitoring:

The internal temperatures of retail gas and electric ovens may fluctuate during a typical cooking test, and this can impact the consistency of cooking validation results and the quality of the product that the customer obtains when following cooking instructions provided with a given product. It is, therefore, important to recognize and account for this variation by following the basic suggestions below:

1. The internal temperatures of the testing oven should be monitored and recorded during the cooking cycle utilizing a calibrated thermometer and/or a calibrated data logger at the following suggested time points:
 - a. At the start of each cooking cycle after the product is loaded and timer is started
 - b. At least every 5 minutes during the cooking cycle
 - c. At the end of the cooking cycle, immediately before removing product
2. Once preheated, data points from the oven should be assessed and compared to set temperature points to determine:
 - a. Minimum oven operating temperature
 - b. Maximum oven operating temperature

Appendix: Product Tested—New Copy



Package research Executive Summary

The new package communicates the raw product state significantly better

- Recall of the word “raw” nearly doubles (42% w/old pack to 82% w/new pack)
- Understanding of the raw product state increases from 55% to 76% overall
 - Among females who indicate they are the primary meal preparer, it goes from 54% to 82%

The oven symbol does a good job in reinforcing the raw state of the product and how it should be cooked

In both the new and old versions the vast majority of consumers plan to cook the product in the oven (75% for old copy vs. 79% for new copy)

- Open end playback of packaging likes are consistent with the other findings—more mention raw and must be cooked in oven/not microwavable with the new package
 - Recall of a meat thermometer increases significantly overall (from 53% to 70%)
 - The open ends suggest meat thermometer communicates that the product must reach a certain temperature/be cooked well or thoroughly—but not necessarily that the product is raw

Product State—Did you notice the word “Raw?”

- Multiple placements of the word “raw” nearly double the percentage of consumers who notice the word
- The percentage is higher among females compared to males

	Total		Total Females		Total Males		Total Females + Involved In Purchase/Prep		Total Females + Involved + Buy Chicken Breasts	
	Old A (499)	New B (501)	Old C (257)	New D (263)	Old E (243)	New F (237)	Old G (237)	New H (247)	Old I (157)	New J (167)
Yes	42	82 A	40	85 C	44	78 E	40	85 G	45	87 I
No	58 B	18	60 D	15	56 F	22	60 H	15	55 J	13

Q 10: “When you first saw the package, did you notice the word ‘Raw’ to describe the product?”

CAPITAL LETTER indicates 95% confidence level vs. other column

Lower case indicates 90% confidence level vs. other column

Product State—What is the product state?

- New packaging copy has significant impact on the percentage of all consumers who believe the chicken is raw, especially among females and females involved in the category

	Total		Total Females		Total Males		Total Females + Involved In Purchase/Prep		Total Females + Involved + Buy Chicken Breasts	
	Old A (499)	New B (501)	Old C (257)	New D (263)	Old E (243)	New F (237)	Old G (237)	New H (247)	Old I (157)	New J (167)
The chicken is already fully cooked	33 B	16	31 D	12	35 F	21	32 H	12	36 J	12
The chicken is raw	55	76 A	54	82 C	56	70 E	54	82 G	55	83 I
I am not sure if the chicken is raw or fully cooked	12	8	15 D	6	9	10	15 H	6	10	4

Q4: “Based on what you noticed from the packaging, please select one statement below that describes the chicken in this product”

CAPITAL LETTER indicates 95% confidence level vs. other column
Lower case indicates 90% confidence level vs. other column

Product State—Did anything call your attention to raw state and what appliance should be used?

- The oven symbol does a good job in reinforcing the raw state of the product and how it should be cooked, increasing recognition by over 30 points

	Total		Total Females		Total Males		Total Females + Involved In Purchase/Prep		Total Females + Involved + Buy Chicken Breasts	
	Old A (499)	New B (501)	Old C (257)	New D (263)	Old E (243)	New F (237)	Old G (237)	New H (247)	Old I (157)	New J (167)
Yes	44	76 A	46	80 C	42	73 E	46	80 G	48	85 I
No	56 B	24	55 D	21	58 F	28	54 H	20	52 J	15

Q 11: “When you first saw the front of the package, did you see anything calling your attention to the raw state of the product and what appliances [should] be used to cook the product?”

CAPITAL LETTER indicates 95% confidence level vs. other column
Lower case indicates 90% confidence level vs. other column

Cooking Method—Proper preparation method

- The vast majority of consumers will bake the product in the oven

	Total		Total Females		Total Males		Total Females + Involved In Purchase/Prep		Total Females + Involved + Buy Chicken Breasts	
	Old A (499)	New B (501)	Old C (257)	New D (263)	Old E (243)	New F (237)	Old G (237)	New H (247)	Old I (157)	New J (167)
Cook in oven	75	79	79	83	72	74	79	83	81	86
Heat in microwave	10	7	8 d	4	13	11	8 h	4	8	4
Cook in oven or heat in microwave	15	14	14	13	16	16	13	13	12	10

Q 5: “Which statement best describes the proper preparation method(s) for this product?” (Please select one)

CAPITAL LETTER indicates 95% confidence level vs. other column
Lower case indicates 90% confidence level vs. other column

Meat Thermometer—Notice mention of a meat thermometer?

- Women are significantly more likely to notice the mention of a meat thermometer on the new package than males

	Total		Total Females		Total Males		Total Females + Involved In Purchase/Prep		Total Females + Involved + Buy Chicken Breasts	
	Old A (499)	New B (501)	Old C (257)	New D (263)	Old E (243)	New F (237)	Old G (237)	New H (247)	Old I (157)	New J (167)
Yes	53	70 A	41	76 C	55	62	52	77 G	53	81 I
No	47 B	31	49 D	24	45	38	49 H	23	48 J	19

Q 13: “Did you notice anywhere on the packaging the mention of a meat thermometer?”

CAPITAL LETTER indicates 95% confidence level vs. other column
Lower case indicates 90% confidence level vs. other column

Thermometer—Open End Responses

- A meat thermometer suggests consumers must cook the product well and/or to a certain temperature for safety reasons
- It is not necessarily telegraphic that a meat thermometer means raw

- Note: We believe more respondents say they a meat thermometer means “raw” for the old copy because fewer consumers noticed a mention of the meat thermometer for that concept (see previous page) or thought it was raw originally

	Total		Total Females	
	Old A (499)	New B (501)	Old C (257)	New D (263)
Preparation (NET)	54	50	59	55
Cook right/well/thoroughly	18	13	22	13
Cook to certain/proper temperature	14	15	13	16
Cook to certain temperature for safe consumption	10	8	12	10
165 degrees/cook to 165 degrees	8	10	7	10
Cook properly/thoroughly for safe consumption	4	3	4	3
Product Attributes (NET)	17	12	20	14
Raw food/meat	15 A	8	17 D	8
Need/Usage (NET)	13	19 A	13	19
Used to check temperature	5	6	4	7
Check for doneness/safety	3	4	6	5
Don't like/use it	3	4	4	3
Convenience (NET)	6	7	6	5

Q 14: “What does the mention of a meat thermometer mean to you about the product and its preparation? Please be as specific as possible.”

CAPITAL LETTER indicates 95% confidence level vs. other column
Lower case indicates 90% confidence level vs. other column

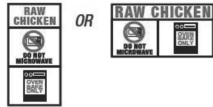
Recommended Raw Packaging Guidelines

Consensus guidelines of top 4 Stuffed Breast manufacturers
 Need USDA FSIS input on guidelines & how to [standardize]



FRONT PANEL:

1. “Raw” in the name of product to follow USDA regulations
2. NEW “RAW CHICKEN” icon: – the icon MUST be prominent, conspicuous and legible
3. Serving Suggestion notice: – Copy must convey product after cooking/baking
4. Safety statement at bottom of package: – RAW/RAW PRODUCT - all caps, minimum type height 1/4” – FOR FOOD SAFETY . . . all caps or upper and lower case, minimum letter height of the capital letter must be 1/2 the height of RAW



And now I am pleased to recognize Mr. Larew. Please begin when you are ready.

STATEMENT OF ROBERT L. LAREW, PRESIDENT, NATIONAL FARMERS UNION, WASHINGTON, D.C.

Mr. LAREW. Thank you. Chairman Thompson, Ranking Member Scott, and Members of the Committee, I appreciate the opportunity to testify today.

National Farmers Union is the nation's second-largest general farm organization, and we advocate for the economic prosperity of family farmers, ranchers, and their communities through education, cooperation, and legislation. As we approach the 2023 Farm Bill, we should all work together to resolve flawed regulations, mounting uncertainty, and inflationary pressures.

Family farmers and ranchers are particularly vulnerable to the effects of inflation. Supply chain disruptions due to Russia's invasion of Ukraine, rapid shifts in demand and supply backlogs from the pandemic, and the lingering effects of trade disputes with China have all set the stage for rising costs for farmers and ranchers. These inflationary pressures are intensified by a lack of market competition in the food system. We have few buyers and sellers to choose from. As of 2019, the top four companies in the cattle trade controlled 85 percent of the market. For pork, that was 67 percent, and for broiler chickens, 53 percent. There is also heavy concentration of markets for corn and soybean seeds, herbicides and pesticides. For tractors and other farm machinery, just three companies dominate the market.

With such little competition, the opportunity for market manipulation and unfairness is greatly intensified, and this adds to inflationary pressure. For example, we have seen price-fixing by meat packers and poultry integrators in recent years, with settlements totaling nearly \$1 billion, and a lawsuit alleges the big four meat packers are manipulating the market. Major farm equipment manufacturers continue to refuse to provide us with access to the software tools to make repairs, and a mega-merger between Kroger and Albertson's is expected to drive consolidation among processors, wholesalers, and distributors. We must create fairer and more competitive markets that drive innovation, increase choice, and decrease input costs and boost prices for crops and livestock.

NFU believes family farmers and ranchers should be allowed to do what we do best: sustainably produce food, feed, fiber, and fuel. Regulations, when needed, should be science-based, size and risk appropriate, clear, and only implemented after thorough feedback. Unfortunately, this doesn't always happen. For example, confusing regulations and court decisions regarding the definitions of *Waters of the U.S.* have made it difficult to comply with the Clean Water Act. Clean, safe water is an essential natural resource we work hard to protect, and regulators shouldn't make it so difficult for farmers to accomplish this.

NFU is also concerned by a potential change in the longstanding policy on labeling of crop protection products. The change, based on a position taken by the U.S. Solicitor General in a brief to the Supreme Court could open up the door to an impractical patchwork of labeling requirements that aren't science-based.

One of the greatest sources of uncertainty farmers face is climate change. We are on the frontlines of climate change with shifting weather patterns and increasingly severe weather events, making farming more unpredictable and difficult. Now more than ever leadership on climate change is essential, which is why NFU is a proud founding member and co-chair of the Food and Agriculture Climate Alliance. Last week, FACA released farm bill recommendations aimed at helping us mitigate climate change and to make the entire farm and food system more resilient through a voluntary science- and incentive-based approach. To address climate change, we should build on recent investments in farm bill conservation programs and renewable energy, the creation of USDA's partnerships for climate-smart commodities, and passage of the Growing Climate Solutions Act and the SUSTAINS Act.

By working together, we can overcome the challenges presented by faulty regulations, mounting uncertainty, and inflationary pressures. NFU recently launched the Fairness for Farmers Campaign to shed light on the devastating impact that monopolies and near monopolies have on family farmers, ranchers, and their communities. That is why we are calling for a competition title in the farm bill, which should include provisions that improve transparency and price discovery in cattle markets, strengthen the Packers and Stockyards Act, ensure farmers' right to repair, reinstate mandatory country-of-origin labeling, and ease regulatory burdens for diversified food processing. By building fair and competitive markets, we address inflation, improve regulations, and reduce uncertainty. I look forward to working with you to address these challenges. Thank you for the opportunity to be here.

[The prepared statement of Mr. Larew follows:]

PREPARED STATEMENT OF ROBERT L. LAREW, PRESIDENT, NATIONAL FARMERS
UNION, WASHINGTON, D.C.

Good morning, Chairman Thompson, Ranking Member Scott, and Members of the Committee. It is an honor to be invited as a witness before the House Committee on Agriculture and to provide testimony on behalf of the more than 220,000 members of National Farmers Union (NFU). Founded in 1902, NFU is a grassroots organization that advocates on behalf of family farmers, ranchers, and their communities, and represents members across the country whose operations range in size, type, and production method.

As this Committee considers the 2023 Farm Bill, hearings like this will serve the important purpose of identifying commonalities and points of agreement that can be brought forward in the legislative process. This hearing can also make clear the positions of family farmers and ranchers and other stakeholders in agriculture. The hearing title, "Uncertainty, Inflation, Regulations: Challenges for American Agriculture" sheds light on many concerns held by Farmers Union members. I commend Chairman Thompson for bringing these topics to the forefront at the first hearing of the House Agriculture Committee in the 118th Congress.

Family farmers and ranchers are particularly vulnerable to the effects of inflation, and we have felt this throughout history and especially in the last few years. Normal trade flows were interrupted in 2018 and 2019 because of policy disputes with our trading partners, and those trade flows were further disrupted due to the upheaval resulting from the COVID-19 pandemic. These seismic changes led to diminished supplies and rapid shifts in demand as stay-at-home directives changes our daily routines. These inflationary conditions were compounded by macroeconomic

factors, but the inflation felt today is amplified because market power throughout the economy is increasingly concentrated among very few firms.¹

This hearing is also timely and topical because the House Agriculture Committee has a great opportunity in the year ahead to make meaningful and lasting reforms through the farm bill. Family farmers and ranchers should be allowed and empowered to do what we do best: produce a safe and nutritious food supply for our communities. Laws, rules, and regulations should help us do that, not hinder us. Farmers Union members also face many emerging challenges—like climate change, a food system that lacks resilience, and a volatile market—that need to be directly confronted by policymakers to provide greater certainty.

Inflation

Inflation is exacerbated by consolidation and lack of competition in the food system. Very few firms control the market for farm inputs (such as seeds, crop protection, fertilizer, and equipment manufacturing), processing (including livestock slaughter and processing), food manufacturing, wholesale distribution, food service, and grocery retail. Farmers and consumers are on either end of this consolidated supply chain and are comparatively numerous and decentralized. The small set of large, consolidated firms in the middle of the supply chain wield immense market power over farmers and consumers.²

The trend toward greater consolidation of the farm and food system has been ongoing. The four-firm concentration ratio (CR4), which specifies the market share for the top four firms in an industry and is a commonly used metric for illustrating market concentration, has risen precipitously among meatpackers and poultry processors. From 1977 to 2019, the CR4 for beef packers that slaughter steers and heifers rose from 25 to 85 percent.^{3, 4} For pork, the increase in CR4 from 1976 to 2019 was 33 to 67 percent.⁵ For broiler chickens, the CR4 increase from 34 percent in 1986 to 53 percent in 2019,⁶ and as the level of national-level industry consolidation may be lower for broilers, concentration is often higher in localized markets.⁷

Increasing consolidation and declining competition pervades other sectors as well. As of 2015, the top four firms for corn and soybean seeds controlled 85 percent and 76 percent of the market, respectively; this compares to 59 percent for corn seed in 1975, and 42 percent for soybean seed in 1988.^{8, 9} Four firms account for approximately 84 percent of the global herbicide and pesticide market,¹⁰ and just two companies manufacture about half of the tractors and other essential farm machinery used by farmers.¹¹ Market share in retail grocery is also heavily consolidated, with

¹Bräuning, Falk, José L. Fillat, and Gustavo Joaquim. 2022. “Cost-Price Relationships in a Concentrated Economy.” Federal Reserve Bank of Boston Current Policy Perspectives. May 23, 2022.

²Jonathan B. Baker, “Market power in the U.S. economy today,” Washington Center for Equitable Growth, March 2017. <https://equitablegrowth.org/market-power-in-the-u-s-economy-today/>.

³Cai, X., K.W. Stiegert, and S.R. Koontz, “Oligopsony Fed Cattle Pricing: Did Mandatory Price Reporting Increase Meatpacker Market Power?” *Proceedings of the NCCC-134 Conference on Applied Commodity Price Analysis, Forecasting and Market Risk Management*. St. Louis, MO. https://legacy.farmdoc.illinois.edu/nccc134/conf_2011/pdf/confjp24-11.pdf.

⁴USDA, Agricultural Marketing Service (AMS), Packers and Stockyards Division, “Annual Report 2020.” <https://www.ams.usda.gov/sites/default/files/media/PackersandStockyardsAnnualReport2020.pdf>.

⁵Clement E. Ward, “Economics of Competition in the U.S. Livestock Industry,” January 2010. <https://www.justice.gov/sites/default/files/atr/legacy/2011/09/09/AGW-15639-a.pdf>.

⁶Joel Greene, “USDA’s ‘GIPSA Rule’ on Livestock and Poultry Marketing Practices.” (Washington: Congressional Research Service, 2016), https://www.everycrsreport.com/files/20160107_R41673_e1d67b445c928f46a6b23a04c38d116fdb819c93.pdf.

⁷James M. MacDonald, “Technology, Organization, and Financial Performance in U.S. Broiler Production” (USDA, Economic Research Service, 2014), https://www.ers.usda.gov/webdocs/publications/43869/48159_eib126.pdf?v=0.

⁸Jorge Fernandez-Cornejo, “The Seed Industry in U.S. Agriculture: An exploration of data and information on crop seed markets, regulation, industry structure, and research and development.” USDA Economic Research Service, https://www.ers.usda.gov/webdocs/publications/42517/13616_aib786_1.pdf?v=3857.1.

⁹James MacDonald, “Mergers and Competition in Seed and Agricultural Chemical Markets,” USDA Economic Research Service, 2017, <https://www.ers.usda.gov/amber-waves/2017/april/mergers-and-competition-in-seed-and-agricultural-chemical-markets/>.

¹⁰Claire Kelloway and Sarah Miller, “Food and Power: Addressing Monopolization in America’s Food System,” Open Markets Institute, May 13, 2019. <https://www.openmarketsinstitute.org/publications/food-power-addressing-monopolization-americas-food-system>.

¹¹*Ibid.*

the top four retailers controlling approximately 65 percent of sales in 2018.¹² As corporate consolidation in our food system has marched steadily forward, farmers have watched their choices decline and their market power continue to falter.

Grocery Retail

Concentration of market power among grocery retailers places pressure throughout the rest of the food supply chain, driving further consolidation among processors, wholesalers, and at the producer level. It is contributing to higher prices for consumers, results in less innovation, and fewer marketing options for family farmers and ranchers. A proposed merger of two of the largest grocery chains, Kroger and Albertson's, would greatly harm competition in the grocery retail sector. The rise of national supermarket chains over the last thirty years has decimated independent grocery stores, and between 1994 and 2019, the total number of grocery stores across the U.S. declined by 30 percent.¹³ In December 2022, NFU joined with a coalition of farm and consumer advocate groups to send a letter to the Federal Trade Commission (FTC) to block this proposed merger.¹⁴

Meatpacking

Increased concentration in many sectors of agriculture, with food processing as the most egregious example, has contributed to bottlenecks in America's food supply chain. Just a few meatpackers, with a few large processing facilities, process most of the livestock that farmers and ranchers raise into the meat that we buy. Workers in these facilities are impacted as well. In the last month, the Department of Labor penalized one of the nation's largest food processing contractor providers for having employed more than 100 children in highly dangerous jobs.¹⁵

There have been approximately 20 settlements for price fixing by meatpackers and poultry integrators since 2018, totaling nearly \$900 million in penalties.¹⁶ A pending lawsuit against the big four meatpackers, which alleges that the corporate giants have been working together since 2015 to suppress the volume of cattle slaughtered, continues to work its way through the courts, with settlements already totaling tens of millions of dollars.¹⁷ During 2020 and 2021—when most pandemic-related supply chain issues occurred—the largest meat processing companies saw their net profit margins increase more than 300 percent.¹⁸

Inputs

Another troubling aspect of the farm economy recently has been input costs, particularly for fertilizers such as nitrogen, potash, and phosphorus. Price spikes, notably in late 2021 and early 2022, were severe and prolonged, and the threat of similar input price volatility adds uncertainty to the farm economy.¹⁹ Supply chain disruptions, due to the Russian invasion of Ukraine and lingering supply interruptions from the pandemic, have contributed greatly to this problem.²⁰

There are structural challenges to building a diverse and competitive market in the fertilizer industry, as natural resources are constrained to just a few locations. However, actions by monopolies further reduce competition in the fertilizer market and leads to additional price pressures and volatility. The global market for fertilizer is dominated by just a few major players, and those producers have abused their market power to raise prices over the decades, which harms farmers as well

¹² CBRE, "2019 U.S. Food In Demand Series: Grocery," May 2019.

¹³ Food and Water Watch, "The Economic Cost of Food Monopolies: The Grocery Cartels," November 2021. https://www.foodandwaterwatch.org/wp-content/uploads/2021/11/IB_2111_FoodMonoSeries1-SUPERMARKETS.pdf.

¹⁴ Open Markets Institute, "Farm, Consumer, and Antimonopoly Groups All Urge the FTC to Oppose Kroger-Albertsons Merger," December 1, 2022. <https://www.openmarketsinstitute.org/publications/farm-consumer-antimonopoly-groups-all-urge-the-ftc-to-oppose-kroger-albertsons-merger>.

¹⁵ U.S. Department of Labor, "More than 100 Children Illegally Employed in Hazardous Jobs, Federal Investigation Finds; Food Sanitation Contractor Pays \$1.5M in Penalties," February 17, 2023. <https://www.dol.gov/newsroom/releases/whd/whd20230217-1>.

¹⁶ Data compiled by NFU—various news reports and sources.

¹⁷ "Beef giant JBS to pay \$52.5 million to settle price-fixing lawsuit," *Des Moines Register*, February 4, 2022. <https://www.desmoinesregister.com/story/news/2022/02/04/jbs-settles-lawsuit-millions-price-fixing-beef-processors-meatpacking/6664089001/>.

¹⁸ Andrea Shalal, "Meat packers' profit margins jumped 300% during pandemic—White House economics team," *Reuters*, December 10, 2021. <https://www.reuters.com/business/meat-packers-profit-margins-jumped-300-during-pandemic-white-house-economics-2021-12-10>.

¹⁹ Kent Thiesse, "2022 farm input costs rapidly rising," *Farm Progress*, November 30, 2021. <https://www.farmprogress.com/crop-protection/2022-farm-input-costs-rapidly-rising>.

²⁰ Suzanne Jenkins, "How the Russia-Ukraine War Helped Fuel Record Fertilizer Prices," Federal Reserve Bank of St. Louis, October 4, 2022. <https://www.stlouisfed.org/publications/regional-economist/2022/oct/russia-ukraine-war-record-fertilizer-prices>.

as consumers.²¹ USDA has undertaken an initiative to bring more domestic and diversified production to the fertilizer industry, which NFU welcomes. Further efforts should be pursued in the regulatory area to allow for greater production of fertilizer in the U.S. to help build a stronger food system and a more equitable marketplace.

The market for crop protection products has also been susceptible to inflationary pressures due to a lack of competition among the major providers. In 2022, the FTC and ten state attorneys general filed a complaint in Federal court against two major agricultural crop protection manufacturers for using a “pay-to-block” scheme that raised input prices for farmers and unfairly shut out competitors, which stifles innovation and harms the marketplace.²² Furthermore, the case holds that these companies sought to maintain their near-monopolies over certain fungicides, herbicides, and insecticides by paying distributors to carry fewer competing generic products. Markets ought to be competitive and fair, so that new companies can enter the input marketplace and drive innovation, improve service, and decrease input prices for family farmers and ranchers.

Product Labeling

NFU supports mandatory, uniform labeling for food products throughout the processing chain and supports the reauthorization and full implementation of mandatory country-of-origin labeling (COOL) for meat, poultry, and aquaculture products. Clear and accurate food labels enable consumers to make informed purchasing decisions and allow farmers and ranchers to differentiate their products. Importing cheaper products from other countries and passing off premiums to local products is depressing prices for local ranchers and undermining consumer confidence in labels. A consolidated and uncompetitive beef packing industry is exploiting consumers, workers, and ranchers alike. American consumers deserve the right to choose, American cattle farmers and ranchers deserve the right to compete for the consumers’ favor in their domestic market, and meat processing workers deserve quality jobs.

President Biden’s July 2021 Executive Order on competition included a directive to the U.S. Department of Agriculture (USDA) to clarify that meat may be labeled “Product of USA” only if the animal spent its entire life within the U.S. Under current voluntary labeling rules, meat can be designated a “Product of USA” if it is processed domestically, but born, raised, and/or slaughtered in another country. This misleading claim puts domestic producers at a competitive disadvantage and prevents consumers from making fully informed decisions about the products they buy. Truthful and accurate voluntary labels are important to producers and helpful for consumers, but they are not a replacement or substitute for mandatory COOL.

Right to Repair

Right to Repair is a major issue across many industries but has a profound impact on farmers and ranchers. With only three companies dominating the market for large farm machinery, farmers have few choices in the marketplace. The major equipment manufacturers have long refused to make critical repair tools fully available to farmers and independent mechanics, leaving them no choice but to take broken equipment to a licensed dealership. These restrictions, paired with dramatic consolidation among dealerships across the country, lead to inflated service prices and lengthy delays during planting and harvest windows.

There are few alternatives for farmers who want to buy equipment they can fix themselves. Some farmers have resorted to buying older tractors that can be repaired without software tools.²³ This leads to inflated prices for older equipment and is not a long-term solution. Family farmers are put at a great disadvantage if they are forced to choose between the ability to independently fix their own tractor or to reap the benefits of the technological advancements of modern equipment.

Federal legislation, like the Agricultural Right to Repair Act introduced by Sen. Jon Tester (D-MT), would ensure that farm equipment owners and independent mechanics have access to all the documentation, parts, and software tools required to diagnose, repair, and maintain modern equipment. On the state level, Right to Re-

²¹ C. Robert Taylor and Diana L. Moss, “The Fertilizer Oligopoly: The Case for Global Antitrust Enforcement,” The American Antitrust Institute, October 4, 2013. <https://www.antitrustinstitute.org/work-product/the-fertilizer-oligopoly-the-case-for-global-antitrust/>.

²² Federal Trade Commission, “FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers,” September 29, 2022. <https://www.ftc.gov/newsevents/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate>.

²³ Adam Belz, “For tech-weary Midwest farmers, 40-year-old tractors now a hot commodity,” *Star Tribune*, January 5, 2020. <https://www.startribune.com/for-tech-weary-midwest-farmers-40-year-old-tractors-now-a-hot-commodity/566737082/>.

pair bills have been introduced in 20 states already in 2023. On February 21, 2023, the Colorado House of Representatives approved the Consumer Right to Repair Agricultural Equipment Act (HB23-1011) which would require manufactures to provide parts, software, documentation, and other tools to independent repair providers or equipment owners and would deem failure by manufacturers to provide such resources to be a deceptive trade practice.²⁴

Among Federal agencies, the FTC unanimously adopted a policy in 2021 to ramp up law enforcement against illegal repair restrictions. In 2022, NFU and allies filed a complaint with the FTC against John Deere for restricting repair options. On February 13, 2023, the Department of Justice (DOJ) filed a statement of interest in a Right to Repair lawsuit filed against John Deere in the U.S. District Court for Northern Illinois. The filing by DOJ urges to the court to find in favor of the farmer-plaintiffs who allege that John Deere has monopolized the repair service market by withholding access to the software tools necessary to repair equipment. Also in February, NFU supported a petition to the Environmental Protection Agency (EPA) to enforce provisions in the Clean Air Act (CAA) that allow farmers and ranchers to repair their own equipment.²⁵ The petition, filed by Right to Repair advocate Willie Cade, asks the court to issue a *writ of mandamus* compelling the EPA to require John Deere to comply with the CAA.²⁶

Regulations

Family farmers and ranchers are poorly served by overly burdensome regulations and regulatory uncertainty that can make it difficult for them to do what they do best: to sustainably produce ample food, feed, fiber, and fuel. Regulation, when needed, should be science-based, size- and risk-appropriate, and should be instituted after thorough and ample feedback from the regulated community.

Waters of the United States (WOTUS)

Clean, safe water is an essential resource that family farmers, ranchers, and their communities depend on. Farmers and ranchers strive to be good stewards of our nation's natural resources, including by protecting water quality through sound land management practices. Ambiguous or confusing regulations regarding the definition of *Waters of the United States (WOTUS)* under the Clean Water Act (CWA) have made compliance difficult and unduly burdensome.

The regulatory uncertainty created by frequently changing definitions of *WOTUS* have troubled farmers for many years. NFU has repeatedly provided input to the EPA and the Army Corps of Engineers on their rulemakings, and we have asked the agencies to promulgate rules that will provide a clear definition of *WOTUS*. NFU has also urged the agencies to consult farmers and ranchers regularly, extensively, and equitably and consider the legitimate concerns of family farmers and ranchers and others who will be regulated under updated and new CWA rules.²⁷

NFU appreciates the agencies' stated efforts to establish durable rules that define the scope of waters protected under the CWA. Despite a recent final rule from the agencies, an ongoing Supreme Court case on *WOTUS* continues to add uncertainty to the *WOTUS* statutory and regulatory regime. Ultimately, Farmers Union members wish for the courts and agencies to balance the important goal of protecting water quality with rules that are clear, simple, and not unduly burdensome for farmers and ranchers.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)—the primary Federal statute governing pesticides—is key to our science-based regulatory approach to crop protection products and helps ensure farmers can continue using these products prudently on their farms. Thus, NFU was concerned by a recent change in long-standing policy regarding the regulation and labeling of crop protec-

²⁴Todd Neeley, "Colorado House Advances Repair Bill," *DTN/Progressive Farmer*, February 21, 2023. <https://www.dtnpf.com/agriculture/web/ag/equipment/article/2023/02/21/colorados-house-passes-bill-giving>.

²⁵National Farmers Union, "NFU Supports *Writ of Mandamus*, Implores EPA to Enforce Right to Repair Provisions in Clean Air Act," February 16, 2023. <https://nfu.org/2023/02/16/nfu-supports-writ-of-mandamus-implores-epa-to-enforce-right-to-repair-provisions-in-clean-air-act/>.

²⁶Todd Neeley, "Deere Seeks End to Right-to-Repair Case," *DTN/Progressive Farmer*, January 24, 2023. <https://www.dtnpf.com/agriculture/web/ag/equipment/article/2023/01/24/john-deere-asks-court-issue-ruling>.

²⁷National Farmers Union, Re: Docket ID No. EPA-HQ-OW-2021-0602; "Revised Definition of 'Waters of the United States,'" February 7, 2022. https://nfu.org/wp-content/uploads/2022/02/02-07-22-NFU-Comments_WOTUS_EPA-HQ-OW-2021-0602.pdf.

tion products based on a position taken by the U.S. Solicitor General in a brief to the U.S. Supreme Court.

The brief, submitted in May 2022 by Solicitor General Elizabeth Prelogar, argues that Federal pesticide registration and labeling requirements do not preclude states from imposing additional labeling requirements, even if those requirements run counter to Federal findings. The Solicitor General's brief, while focused on glyphosate, adopts a position that could apply to any crop protection product. Thus, the decision taken in the brief may undermine the FIFRA—and open the door to an impractical patchwork of state pesticide labeling requirements. We are concerned that the decision taken in the brief could threaten producers' access to crop protection products through state regulations that are not science-based.

Growing Climate Solutions Act

Sometimes, an unregulated marketplace without any guardrails can hinder the growth and development of market opportunities—including for farmers and ranchers. Insufficient access to reliable, vetted information about carbon and other environmental credit markets for agriculture has limited farmer participation in these markets. Consequently, farmers may be missing out on an opportunity to generate revenue while implementing practices that can make their farms more resilient and mitigate climate change.

The recently enacted bipartisan, bicameral Growing Climate Solutions Act is meant to address this problem by creating a registration program at USDA for these environmental credit markets. By improving transparency of these markets through USDA oversight and reducing technical barriers to entry, farmers have a better chance of being able to participate, and for these markets to develop to benefit all.

Packers and Stockyards

The Packers and Stockyards Act (PSA) protects livestock and poultry producers from unfair, deceptive, and monopolistic practices in the marketplace. These important protections for family farmers and ranchers have not been adequately enforced for the last few decades, which has led to rampant consolidation in the livestock industry, reduced transparency in the marketplace, the rise of unfair contract terms, and depressed prices paid to farmers.

President Biden's July 2021 Executive Order on competition directed USDA to write new rules under the PSA. Thus far, rulemakings would require poultry companies to be more transparent with the growers with whom they contract, and would prohibit certain prejudices, disadvantages, discrimination, retaliation, and deceptive practices, in livestock markets. USDA has taken further steps to bring more transparency to the livestock market with a cattle contract library and reporting more details about market activity. Additional rulemakings are expected regarding the barriers farmers face to file legal challenges under the PSA and the unfairness of poultry grower tournament systems.

The proposed rules from USDA are sorely needed. Without strong enforcement of the PSA, farmers and ranchers will continue to face an unfair marketplace. NFU supports expanded and emphasized enforcement of these and related rules, with the establishment of an independent office focused on preventing abuses of power by corporate monopolies. Such an office would be made possible through the enactment of the Meat and Poultry Special Investigator Act.

The Executive Branch has taken steps to ensure that farmers who have been harmed by abuses of market power have a voice. One example of how this is the USDA Agricultural Marketing Service partnership with DOJ to create the Farmer Fairness portal.²⁸ This online tool makes it easier for farmers, ranchers, and others to report potential violations of competition laws including, but not limited to, the PSA.

Renewable Fuel Standard

Reasoned legislative and regulatory actions can create economic development opportunities for rural communities and family farmers and ranchers. A prime example of this is the Renewable Fuel Standard (RFS) program, authorized in 2005 and expanded in 2007, which is intended to reduce greenhouse gas emissions and expand the biofuels sector.²⁹ It has been the most successful clean fuels policy in the U.S. and makes fuel more affordable for millions of Americans, helps to generate jobs, revives rural economies and communities, reduces oil imports, and protects the environment by reducing air pollution. Future regulatory actions related to the RFS should be geared towards its continued growth and success. Higher blends of eth-

²⁸ Farmer Fairness. <https://www.usda.gov/farmerfairness>.

²⁹ Renewable Fuel Standard Program. <https://www.epa.gov/renewable-fuel-standard-program>.

anol, such as E30, should be brought into the RFS also with the use of farm-based crops for sustainable aviation fuel. Additionally, USDA is providing \$100 million in biofuels infrastructure grants through the Higher Blends Infrastructure Incentive Program. NFU urges Committee Members to support the RFS and the continued growth of renewable energy in rural America.

Uncertainty

Climate Change

Climate change is one of the greatest challenges—and sources of uncertainty—facing family farmers, ranchers, our communities, and global food security. Farmers and ranchers have been feeling the effects of climate change for many years through shifting precipitation patterns, historic droughts, and extreme weather events. While farming is by nature unpredictable, climate change is increasing uncertainty and making a difficult job even harder. Farmers Union members have long recognized that the climate is changing; that those changes are affecting all aspects of their operations; and that if they are provided the right tools and adequate resources, they can be a key part of the solution by sequestering carbon in the soil, reducing greenhouse gas emissions, and by building a more resilient and sustainable agriculture. For decades, NFU has been a leader on the issue of climate change and agriculture. Farmers Union has focused on raising awareness about the effects of climate change on farmers and ranchers, while advocating for opportunities for farmers and ranchers to be part of the solution. We have also made sure we are regularly listening to our members on the topic through NFU's Climate Change Policy Advisory Panel (CCPAP).³⁰

Now more than ever, leadership on climate change and agriculture is essential, which is why NFU is a proud founding member and co-chair—along with Farm Bureau, the National Council of Farmer Cooperatives, and the Environmental Defense Fund—of the Food and Agriculture Climate Alliance (FACA).³¹ FACA members represent farmers, ranchers, forest owners, manufacturers, the food industry, state governments, higher education associations, sportsmen and sportswomen, and environmental organizations. These organizations are dedicated to advancing climate solutions across food and agriculture supply chains. Since formally launching in 2020 as a group of eight organizations, FACA has grown to a coalition of over 80 members. To address the uncertainty associated with climate change, FACA released its initial policy recommendations in late 2020.³² Several of these recommendations have become law and others have been implemented by the Administration. Looking ahead, FACA recently extended its consensus-based coalition work by releasing its 2023 Farm Bill recommendations.³³

NFU is heartened by the dedicated action taken by Congress and the Administration in recent years. This includes the recent enactment of significant additional funding for farm bill conservation programs, the creation of USDA's Partnerships for Climate-Smart Commodities, and passage of the Growing Climate Solutions Act and the SUSTAINS Act. All these resources and actions, along with the ingenuity and commitment of farmers and ranchers, are helping us face the uncertainty presented by climate change.

Supply Chains

The COVID-19 pandemic exposed vulnerabilities in the agricultural food supply chain, including bottlenecks from an outdated and aging transportation system, ongoing labor shortages, cybersecurity threats, and lack of competition. These vulnerabilities affect all Americans by threatening the food system. Resolute action on climate change is also needed to secure our supply chains.

The Biden Administration, through Executive Order 14017: America's Supply Chains, has softened the impact of supply chain disruptions. By lifting transportation regulatory burdens and facilitating trade of essential agricultural food products, the uncertainty of the last few tumultuous years has been reduced. Recent undertakings at USDA to increase capacity at the Port of Oakland, California, eased

³⁰ National Farmers Union, "Farmers Union Announces Climate Change Policy Advisory Panel," December 9, 2020. <https://nfu.org/2020/12/09/farmers-union-announces-new-climate-change-policy-advisory-panel/>.

³¹ Food and Agriculture Climate Alliance. <https://agclimatealliance.com/>.

³² Food and Agriculture Climate Alliance, "Food and Agriculture Climate Alliance Joint Policy Recommendations," November 2020. https://agclimatealliance.com/files/2020/11/faca_recommendations.pdf.

³³ National Farmers Union, "FACA Releases Farm Bill Policy Recommendations to Support Economic Opportunities and Address Climate Change," February 22, 2023. <https://nfu.org/2023/02/22/faca-releases-farm-bill-policy-recommendations-to-support-economic-opportunities-and-address-climate-change/>.

port congestion, increased capacity, and is improving services for shippers of U.S. grown agricultural commodities. The supply chain Executive Order also directed USDA to conduct a 1 year assessment of risks and resilience of food supply chains and to identify potential solutions to address supply chain vulnerabilities. Within that assessment, USDA's recommendations included an objective to "support a level playing field to enable competition" and "to assure transparency and fair competition in commodity markets and product safety in meat products."³⁴ These regulatory actions reduce uncertainty in the supply chain while bolstering a more competitive and resilient marketplace.

Similarly, the implementation of the bipartisan *Infrastructure Investment and Jobs Act (IIJA)* helps to address the pinch points in the supply chain. Through IIJA, agriculture and livestock haulers were given the flexibility to safely get their products to market by easing some of the regulatory burdens of hours-of-service requirements.

Agricultural Workforce

An ongoing shortage of skilled farmworkers creates uncertainty for family farmers, contributes to food price inflation, and makes the entire food supply chain less secure and resilient. We must address this workforce crisis threatening farms across the United States so our producers can continue to feed, clothe, and fuel our nation. We need sensible, compassionate immigration reform, including reform of the H-2A visa program, to provide farmers and farmworkers with certainty, lower food prices for American families, and secure our nation's food supply.

Conclusion

Farmers Union members are committed to addressing the challenges that this hearing is exploring. In 2021, NFU launched the *Fairness for Farmers* campaign, an effort to shed light upon the devastating impact that monopolies and near-monopolies have on family farmers and ranchers. The campaign calls for legislative action including diversifying marketing opportunities, improving price discovery and transparency, antitrust enforcement, and reforming the PSA. Many of these priorities could be addressed through the inclusion of a competition title in the 2023 Farm Bill.

Later this week, NFU members will meet at our national convention to set the organization's policy priorities for the coming year through a grassroots, democratic process. The spirit by which we do our work at Farmers Union meetings is similar to the way this Committee can work on the farm bill. As NFU policy states, "our spirit of cooperation must continue to grow and not have limits. Our challenge is to take this knowledge and spirit and incorporate it into meaningful policy through legislation on local, state, and national levels."³⁵ By working together, we can ensure that family farmers and ranchers can overcome the challenges presented by faulty regulations, mounting uncertainty, and inflationary pressures.

Thank you for the opportunity to provide this testimony. NFU stands ready to continue to work with the Committee to address these issues and would be happy to answer any questions.

The CHAIRMAN. Mr. Larew, thank you so much for your testimony. We have also received written testimony from the National Rural Lenders Association and the J.R. Simplot Company, and without objection, it will be inserted into the record.

[The statements referred to are located on p. 245.]

The CHAIRMAN. And thank you all for your important testimony today.

At this time, Members will be recognized for questions in order of seniority, alternating between the Majority and Minority Members and in order of arrival for those who joined us after the hearing convened. You will be recognized for 5 minutes each in order to allow us to get to as many questions as possible.

And I recognize myself for 5 minutes.

³⁴ USDA, Agricultural Marketing Service (AMS), "Agricultural Competition: A Plan in Support of Fair and Competitive Markets," May 26, 2022. <https://www.ams.usda.gov/reports/agricultural-competition-plan-support-fair-and-competitive-markets>.

³⁵ National Farmers Union, *Policy of the National Farmers Union*, March 2022. https://nfu.org/wp-content/uploads/2022/03/2022-NFU-Policy-Book_FINAL.pdf.

I am very proud of the production advancements our farmers, ranchers, and foresters have made, thanks to science, technology, and innovation. And to put this in a global perspective, China and Brazil, both countries with comparable agricultural production levels to the United States, have increased their agriculture emissions by 86 percent over the last 30 years, but the United States has achieved a net decrease in agriculture emissions during that same time. However, we have seen this Administration attack American production agriculture and make it harder for American producers to deliver feed, fuel, and fiber to consumers across the globe.

Now, President Duvall, would you agree with me that true climate-smart agriculture policies would be ones that increase agricultural production and displace the market share of countries like China and Brazil, countries with far less attractive emission profiles than the United States who have not made the same efficiency and productivity strides as we have?

Mr. DUVALL. I would 100 percent. You can't have sustainability without having efficiencies, and doing one helps the other. We as farmers, if you look over the last 3 decades, have done a tremendous job in the sustainability area. And we are doing more with less. Matter of fact, to produce the same crop we produced last year, we would have had to have 100 million more acres cropped than 30 years ago. So that is how efficient we have become, and that is how well we have been sustainable.

The CHAIRMAN. One of the leadership skills that I don't think we have—actually, I never recognized as a leadership skill until a couple years ago, and that is storytelling. And American agriculture has a great story to tell. So how can U.S. agriculture do a better job of telling this story?

Mr. DUVALL. Well, I think we do that every day in our organizations. Mr. Larew, Rob down at the end, he has a great organization. We do, too. We do that storytelling. But the best way for our farmers to do that is open up their farm and let your staff, you, come in and visit with them to actually let them tell their story how the farm bill has helped them through a disaster or through bad pricing times or whatever that might be and through conservation. There are 140 million acres that farmers have voluntarily signed up for conservation programs. And if you put that in context, that is the size of California and New York. They put their own land up voluntarily for conservation, and they are continuing to do that for conservation and climate-smart farming.

The CHAIRMAN. Sticking with a theme of science, technology, and innovation, when it comes to meat and poultry processing line speeds, it seems USDA had the same approach until recently. Unfortunately, following a couple of lawsuits from activist labor groups, I am afraid the Department has halted all progress and is even considering reversing course. Mr. Brown, do you share these concerns? And if so, is there anything that can be done to help the Department get on track?

Mr. BROWN. Well, Mr. Chairman, as you have said, science, innovation, and technology should lead all policy decisions. And unfortunately, on this issue, it appears USDA may have lost its way. We have over 25 years of experience with the increased line speeds that was begun under the HIMP (HACCP-Based Inspection Models

Project) Program. Over the duration of that time, food safety and labor, worker safety figures have all decreased, but the performance has increased. The food safety profile in a line speed plant operating at the higher line speed *versus* the 140 line speed is equal or better than the other plants.

Our concern is that we have 25 years of history, 25 years of data, 25 years of experience with industry and government working together. You have all the statistics at hand. Do the math. Add it up USDA, and let's move forward. But no, we bring in a new study, a group of folks not necessarily friendly to the industry from an institution in California. And now we are going to go through all those statistics again. I don't know what to expect, but I do know we have a long history of success.

And finally, I would like to add the rest of the world operates up to at least 30 percent higher than us. My Chairman was in Germany last week, 220 birds a minute. Okay? How does that stack up against 140 and 175? Canada, as was mentioned earlier, much higher speeds. So we would like to work with the Committee to break through this, do the math, and move forward.

The CHAIRMAN. Well, thank you very much. That is my time. I am now pleased to recognize the gentleman from Georgia, my good friend and Ranking Member for 5 minutes, Congressman Scott.

Mr. DAVID SCOTT of Georgia. Thank you very much, Mr. Chairman.

My first question is to my good friends Mr. Zippy Duvall and Mr. Rob Larew. Now, during our last Congress, we worked hard to alleviate many of the problems we are still addressing today. In the Lower Food and Fuel Costs Act (H.R. 7606, 117th Congress), we expanded producers' access to precision ag, nutrient management tools. We improved the meat processing capacity, expanded domestic biofuels production, we reduced supply chain bottlenecks, and the Inflation Reduction Act. We injected \$20 billion into farm bill conservation programs, \$5 billion into forestry, over \$13 billion into rural development.

So Mr. Duvall, Mr. Larew, how can we build on this work? What must we do to improve marketing opportunities and increase the profitability of our farmers? What must we do? Mr. Duvall, you are first.

Mr. DUVALL. I think we have to continue the work that Secretary Vilsack has done through his commodity climate-smart projects and get that information and data back in from his pilot programs to see what leads us into the future. We also have to make sure that we continue to fund research and development dollars. You got to understand, research and development dollars makes us more sustainable by keeping us more efficient and more competitive. And without those dollars, with other countries outspending us in that area, we could get behind. So those are two areas.

But we have to make sure that we focused—and Mr. Larew mentioned that they were a proud member of FACA, Food and Agriculture Climate Alliance. We are also a member of that. He and I serve on that committee together. And we need to make sure that anything that goes forward is voluntary, market-based, and science-driven. And if that is true, then our farmers will voluntarily step up and do the right thing like they always have done.

Mr. DAVID SCOTT of Georgia. Good point there. And now, Mr. Larew, your thoughts?

Mr. LAREW. Yes, I would echo a lot of what has already been said but then would add that really a lot of the investments that have been made are all about market diversification and making sure that there are greater market opportunities for farmers out there. And while we talk a lot about the pressures that consolidation has brought to agriculture and to farmers and ranchers specifically and the impact that it ultimately has on consumers, you can't just change that overnight. You have to develop new markets. You have to create that opportunity for new. So investment in biofuels infrastructure is a huge thing for those rural communities and for farmers out there for finding other markets. The investment in more local and regional processing is critical to make sure that that infrastructure is there.

And so, in addition to that there are climate benefits from each of those, and along with the climate-smart partnership efforts that the USDA is taking right now, I think that this will go a long way in building up that diversification that we need, both family farmers, and ultimately, consumers.

Mr. DAVID SCOTT of Georgia. Now, Mr. Larew, in your testimony, you made an interesting point. You talked about the tiny share of what consumers pay for food that actually goes to the farmer. Build on that. We have to get more profitability to our farmers. And the tiny bit of money that they are getting after their products are sold is minuscule.

Mr. LAREW. Yes. So the farmer's share of the food dollar is something that National Farmers Union has tracked for a very long time using USDA data. And what we have seen is an erosion of that share of the food dollar really substantially over the last several decades from really a period of about 50 percent of the food dollar to now more in the neighborhood of 12¢ to 13¢ depending on the product of course. But that trend continues across all food.

What we are seeing then in the larger trend is that farmers are receiving less of that food share dollar. Consumers ultimately are paying more for their product out there, and so this is an education tool.

Mr. DAVID SCOTT of Georgia. What can we do about this tiny share?

Mr. LAREW. I think part of it is this diversified market that we are talking about doing, making sure that farmers have more options in which to sell into. Those places where farmers have been able to find local and regional markets, they get a higher share of that food dollar.

Mr. DAVID SCOTT of Georgia. Thank you very much.

Mr. AUSTIN SCOTT of Georgia [presiding.] I now recognize Chairman Lucas for 5 minutes.

Mr. LUCAS. Mr. Chairman, I would be remiss if I didn't note that this is my first hearing on the Committee in 4 years. It is good to be home. It is just good to be home.

And with that, in March of 2022, the U.S. Securities Exchange Commission proposed a rule that expanded the scope of what climate-related information publicly traded companies must disclose to the SEC and to their investors. One part of the deeply flawed

rule required companies to disclose various types of emission information. First, its own direct greenhouse gas emissions, otherwise known as Scope 1. Second, the companies were obligated to disclose the indirect emissions from all purchased electricity or other forms of energy, Scope 2. And finally, serving as a catchall, it would compel the public company to disclose the greenhouse gas emissions from all upstream and downstream activities in its entire value chain, so-called Scope 3 emissions.

Now, I am greatly concerned about the impact this rule will have on farmers and ranchers who serve as the starting point for many of these value chains. President Duvall, could you please speak to the potential impact and cost this rule would place on farmers and ranchers who find themselves ensnared in this broad reporting scheme?

Mr. DUVALL. It can be tremendous. I have spoken to Chairman Gensler once and I am going to speak to him again this week about this issue. Scope 3 would put a heavy bookkeeping burden on our farmers. And yes, if you are a larger farmer, which is two percent of the farming group, you may have the office space and the specialists to be able to make that documentation. But you take a middle-sized, small farmer like myself, that becomes a huge burden and you have to hire someone to do it and have consultants help you through it, so it is tremendous.

But I will tell you this. As a farmer that sells my cattle on the free market and choose where I want to sell it to be in a contract grower for large, vertically integrated company, knowing that when things come down on that company, they have to deliver it. And when they have to deliver it, they turn to me to do it. And there is no one to help record it, there is no one to help to pay for it. And the farmer carries that burden, whether it be cattle or whether it be rain or whether it be poultry. And so it is a tremendous burden, and it is something that we need to stop before it gets started.

Mr. LUCAS. Thank you, Zippy.

Mr. Rosenbusch, I will start with you, but I welcome any insights the rest of the panel may have. Can you speak to the impact this rule would have on publicly traded companies who are members of your organizations?

Mr. ROSENBUSCH. Yes, thank you, Chairman Lucas. The impact on publicly traded companies is one thing because a lot of them are already reporting a lot of their ESG metrics. As a matter of fact, we just released our sustainability report and we have captured an increase of over 300 percent, our emissions, from fertilizer manufacturing. So great strides have been made there, and I will tell you that most of those manufacturers are committed and are doing a lot of that reporting. So I think regulatory certainty, as I mentioned, is what is critical here, but I think a lot of the small- to medium-sized companies that are also involved in the fertilizer supply chain are the ones that we would be most concerned about. And then ultimately, any of the Scope 3 emissions that Zippy referenced I think is going to be really difficult when it comes to these fertilizer companies that would have to report any of that up and downstream.

Mr. LUCAS. Anyone else care to comment on that? Mr. Brown?

Mr. BROWN. Mr. Lucas, while I don't have a policy on that, I will address that under the banner of regulation. In the chicken industry alone on sustainability over the last 10 years, we have reduced land use by 13 percent, greenhouse gas emissions by 18 percent, fossil fuel-based resources by 22 percent, and particulate-forming emissions by 22 percent, all done without the hand of a government mandate.

Mr. LUCAS. You are saying, Mr. Brown—

Mr. BROWN. Knowing that and our sustainability, I would just finish by saying eat responsibly, choose chicken.

Mr. LUCAS. Clearly, it shows the industry responds. You don't have to have an economic baseball bat. With that, I yield back, Mr. Chairman.

Mr. AUSTIN SCOTT of Georgia. The chair now recognizes Mr. McGovern for 5 minutes.

Mr. MCGOVERN. Well, thank you very much, and thank you all for your testimony for being here today.

And Mr. Duvall and Mr. Larew, it is great to see you again. Thank you very much.

So I represent a district that has over 2,000 farms in it. Most of them are small family farms. And a lot of what I heard here today seems to reflect kind of the desires of bigger farmers, more kind of corporate-oriented farms than the ones I represent. I mean, from the testimony that I have heard here and what I have read, I mean, there is calls to kind of weaken the Endangered Species Act to kind of go after some of the Administration's proposed climate actions, weakening of pesticide regulations by using industry science, and we heard about the need to increase truck size and truck weights. And by the way, with all due respect, I think it is a bad idea. We live in the country right now with the highest road fatalities of any developed nation in the world. And the Department of Transportation has studied this and found that even a ten percent increase in truck size and truck weights leads to less control and potentially more crashes. And by the way, the drivers of trucks don't want to see that. So I get it.

But a lot of what I hear from my farmers is related to concerns about corporate consolidation, climate risk, climate crisis. I do farm tours every year in my district, and farmers, small- and medium-sized farmers, talk a lot about the impact that the climate crisis has had on their ability to grow and produce things. I hear a lot about food security. These are all serious topics. And I hope that this Committee will focus on them, similar to the way we did under Chairman Scott's leadership.

But this hearing is about uncertainty, inflation, regulations, challenges for American agriculture. And as we meet some of the pandemic-related assistance in terms of food for struggling families is about to expire. And it is going to be more and more difficult for families to be able to get food to put on the table. I guess, they tell me that SNAP is not only for the neighbors in need, but it is also good for these farmers and for their businesses. And so they get it. Farmers grow food that people eat.

So, Mr. Larew, can you please discuss the importance of SNAP to farming communities?

Mr. LAREW. Yes, thanks for the question. And first of all, I would just say, Farmers Union develops its grassroots policy positions directly from our farmer members. And they renew that each year and consistently have very strong support for making sure that even as we are producing food, that we are doing everything we can to fight food insecurity. And part of the reason for that is because we know that the nutrition programs, SNAP being the largest, have a huge impact not only on making sure that we are fighting food insecurity, but also driving support and market opportunities for farmers, whether it is through fresh fruits and vegetables at farmers' markets. It is also an economic driver in some of these rural communities. In rural America, there is a food insecurity issue as well, and so I believe the statistic is that for every dollar spent on SNAP, you get \$1.75 in economic return and activity. That goes into those local grocers, and ultimately, throughout the community.

Mr. MCGOVERN. And, I have heard criticism from some of my colleagues about nutrition programs taking up too large a portion of the farm bill, so given your expertise on these programs, can you explain how production agriculture titles work together with the nutrition title to help those in need and support a robust farm economy?

Mr. LAREW. Well, certainly the farm bill, of course, is a food security bill, first of all, and so part of that bill is designed to provide a safety net for those of us that are working the land and producing food, whether it is through helping support conservation practices and sustainability or making sure that we have a safety net on the market itself.

On the food side, making sure that there is availability and access for those who, through economic conditions or whatever, are in need of additional assistance. Too often, I sometimes hear the farm bill described as a pie chart that somehow doesn't move and that as a percentage of one program increases, that it might impact or decrease others. And that relative comparison just isn't the way our kind of cyclical programs work, right? One can increase or decrease without a direct impact on any of the budget.

Mr. MCGOVERN. Well, thank you. Mr. Duvall, thank you for mentioning the need for a strong nutrition title in the farm bill. I appreciate it. I think I am out of time.

Mr. AUSTIN SCOTT of Georgia. Thank you. I now recognize myself for 5 minutes.

And, Mr. Duvall, we are both from Georgia, and if you are from Georgia, you not only hear about diesel prices and fuel prices, but you hear about H-2A a lot, especially with our specialty crop growers. And I have heard consistently from farmers in my district as they are trying to navigate all of the changes and the uncertainty about the 14 percent wage rate increase that has occurred with regard to H-2A. Can you speak to Farm Bureau's position on all of the changes to H-2A, including the wage rate and additional transparency and how that rate is actually calculated?

Mr. DUVALL. Sure, Congressman. The AEWR, the wage rate that is handed down to farmers that have to pay migrant workers that are coming to you through the H-2A program is done by a survey, and we think that that wage rate formula is flawed. And we think

we need to go back to the drawing board, look at how that wage rate is set. I mean, if you ask any farmer, how did they set that wage? They say you do it off some kind of survey. Well, did you get that survey? No, I didn't. So we don't know what the survey is, who gets and who fills it out, but we think that it is very flawed. And if you look at a wage rate that climbs faster than the inflation rate does, there is something wrong with that. And if you go to most of these places, most of these farms, especially small-, medium-sized farms, those people that work there, whether they are migrant workers or whether they are other workers, they are part of the family, and they are taking care of those people, and they are paying a very, very fair wage and expecting work out of them like we do our own families.

So it is important that we find a way that we have a stable workforce, that we can bring people from other countries here, not be feared, not fear the Federal Government, and be able to contribute to our society and work and have regulations that farmers and ranchers can actually abide by. The regulation piece of that is so burdensome that a small-, medium-sized farmer has a very difficult time being part of that where a large farm, which is very small percentage, might have an H.R. department to deal with all that. But my farm with two employees, I couldn't do that. So we need to find that way to do that. And we need year-round workers, and we don't need to cap it because we don't know how big the problem is.

Mr. AUSTIN SCOTT of Georgia. Most of the farmers that I know is, as you said, unless they are extremely large farmers, use a third party, which is an additional expense, and it is very complex. But the wage rate, it moved from \$11.99 to \$13.67 if I am not mistaken. But housing, food, there are a lot of other things that are paid for on top of that \$13.67 an hour, is that correct?

Mr. DUVALL. That is correct. You got to give them a place to live. That place to live is inspected, all kinds of regulations that goes around that. You got to give them transportation, everything almost that you would do for a child you have to do for H-2A worker.

Mr. AUSTIN SCOTT of Georgia. One other thing I want to ask you about, the current reference prices with regard to the commodities, it seems to me that they weren't set when diesel prices were as high as they are and fertilizer as high as it is. Could you speak to the need to increase the reference prices to reduce the risk to those that are actually out there planting crops?

Mr. DUVALL. I will. Actually, if you look at our organization, we are looked at as a very conservative organization. Our voting delegates in Puerto Rico at our annual convention this year debated heavily whether or not to ask you all to broaden the baseline. And of course they came down to say, yes, it is time to broaden baseline because those targets that we use in the commodity programs and the cost that we have to go to of growing a crop is nowhere near what it was when those targets were set, Mr. Congressman, and it needs to be modernized, and it needs to be a true safety net based on the cost of production today.

Mr. AUSTIN SCOTT of Georgia. Thank you. I am extremely concerned about the increased risk with commodity prices where they

are and having the potential to fall. Once you have paid for those inputs, they are not going down.

And so I do want to mention since this was brought up earlier, with regard to the ratios on the farm bill, my understanding with the CBO numbers is approximately 82 percent is now scheduled to go to nutrition, according to CBO. And that leaves 18 percent, which gets split between conservation, crop insurance, commodities, and a couple of other things. So those ratios have changed, and they have changed significantly over the course of time.

My time has expired. And with that, I now recognize Ms. Adams.

Ms. ADAMS. Thank you. Thank you very much. And thank you to our witnesses today for being here. Thank you for your service.

Mr. Larew, in your testimony, you address the trend of market consolidation in farm and food systems as harming both farmers and consumers. And you share that grocery store numbers in the U.S. have dropped from 30 percent and large mergers like the proposed merger between Kroger and Albertson's contribute to higher consumer prices and fewer market options for farmers and ranchers. So can you elaborate on the impact of grocery retail consolidation on the farmers and ranchers that you represent?

Mr. LAREW. Yes, I appreciate the question. It really comes down to market choice and options, and the fewer there are and the more pressure there is further down the stream, that puts even greater pressure on farmers and ranchers out there. So as we watch the consolidation going on right now in the retail grocery space, it is not just fewer choices and options within the grocers, but then those few who have so much share then put pressure down on processors and suppliers, and that then goes further down to farmers and ranchers out there. This has an ongoing impact also on the availability of grocery stores and independent grocers out there. And certainly from the rural Americans' perspective, it makes it even more increasingly difficult to have independent grocers in our communities.

Ms. ADAMS. Thank you. The consolidation of meatpacking plants has resulted in price fixing, poor returns for farmers and ranchers, and dangerous working conditions for facility employees. So can you share some of the factors that have led to this problem, as well as what legislation you would like to see us address issues in terms of competition and fairness?

Mr. LAREW. Yes, well, I just say certainly Farmers Union was founded in 1902 at a time when we had outrageous consolidation and monopolies in banking and in the meat industry and everywhere. And really, the impetus for creating the original antitrust laws, which still remain on the books, was to tackle that problem. And it worked for a number of years. Then, changes in the 1980s led to an ever-increasing, rapid consolidation and mergers throughout agriculture and food into the situation that we have today where we have even less competition than we did that led to the creation of the antitrust laws. And so, right now, we don't see anything stopping that. We need greater enforcement for antitrust, greater oversight of the marketplace right now, and so we look forward to working with you.

Ms. ADAMS. Thank you.

Mr. Brown, one of my top priorities is ensuring that Black farmers, ranchers, and producers are treated equitably. So how do you respond to allegations of racial discrimination against minority poultry growers? And is the NCC doing anything to support Black farmers and to ensure that they are treated equitably?

Mr. BROWN. I would say a couple of things on that front. First, I am not aware of any discrimination against Black farmers or any other farmers. I know in the State of Georgia where Mr. Scott is we have a very diverse, very diverse growing population that involves Black growers, Hispanic growers, Asian growers. I know where I live in Delaware I have three plants around me. I can't throw a baseball without hitting one of them, and I have seen the diversity of the growers where I am.

Ms. ADAMS. Well, thank you, sir.

Mr. BROWN. With respect to concentration if I could just add to your question of Mr. Larew, I hear this concentration discussion all the time. I can't speak for the other meat industries, but for chicken, we have a vested interest in our growers succeeding. We hatch the eggs, we take the birds to the farms. In many instances, it keeps farmers, particularly diversified farmers, on the farm by having additional—

Ms. ADAMS. Thank you, sir. I just want to get one more point in here as I follow up in terms of Black farmers. So the USDA investigators determined that Koch Foods, a poultry company in Mississippi, violated USDA rules and actively discriminated against Black farmers. And so the original complaints were filed between 2010 and 2015, but we still have not seen justice for the affected farmers. I just wanted to put that out there. And if anybody has any suggestions about how we can support a fair system that works for all growers, we would like to hear. But I am going to share some information from my office that I have about this discrimination as it relates to Black farmers.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN [presiding.] I thank the gentlelady. I now recognize Mr. Kelly for 5 minutes.

Mr. KELLY. Thank you, Mr. Chairman.

The current Administration continues to tout the importance of increasing meat and poultry processing capacity across the nation. However, their policies online tell another story. Mr. Brown, if all of the poultry processing plants currently operating at higher speeds under waivers were suddenly forced to slow down their operations, what effect would it have on slaughter capacity, the supply chain, and food security? And, Mr. Duvall, after he answers, I would like for you to answer also.

Mr. BROWN. Thank you, Congressman, it would have an extraordinary impact on our industry, take out over 30 percent of production. Today, when you visit the meat case, the lowest-cost protein and the most purchased protein is chicken. Take 30 percent out of production—when you come up with government regulations like this, some people pay twice. The taxpayer is going to pay for expanding government, and the same taxpayer in the grocery store is going to pay more for groceries.

The other group of people that hurt if we cut back down on production are the people that I know we are all concerned with in

this room, and I am too, growers, fewer chickens, fewer birds placed, and the growers are put in a difficult position. So I hope we can work together. I think we all have our heart in the same spot.

Mr. KELLY. Mr. Duvall?

Mr. DUVALL. I would agree with Mr. Brown. I just recently went and toured a facility where they were harvesting poultry. And everyone ought to go. It was mind-boggling how clean and how fast and how safe it was. I was blown away by the quality of work and the quality of the birds and how they did it and how safe it was and how clean it was. I come away with a whole different feeling about the processing end. But he is exactly right. You slow that down, it slows down on my farm and it costs me money. They are not going to pay me because it is late leaving. They are not going to pay me if it sets on before it gets to scales and loses weight before—they are not going to pay me. It is going to cost farmers themselves money. And if we have the data and they say they do—I don't have the data—the safety and the speeds and how it works together, I think we all go by that data and sound science.

Mr. KELLY. Thank you, Mr. Duvall. And, Mr. Chairman, I will yield the balance of my time to Mr. Bacon.

Mr. BACON. Thank you, Mr. Kelly.

My first question is Mr. Duvall if I may. I hear a lot of feedback from our farmers and ranchers in Nebraska on the *Waters of the U.S.* Can you give your position and the negative impacts of *Waters of the U.S.* through the farmers and our ranchers?

Mr. DUVALL. Yes, sir. The *Waters of the U.S.* rule is the largest land grab of the Federal Government in history. And if you look at how that rule has moved from Administration to Administration, our farmers feel like a ping pong ball going back and forth from one side of the table to the other, not being able to make long-term decisions based on what evidence we have. This new rule that came out in December, it took it from a rule that was clear, that we can understand, to make it just muddy as muddy water. Right now, we don't know what an *ephemeral stream* is, whether or not it is a *navigable water* or whether it is a *significant nexus*. So we are waiting on the Supreme Court rule on the *Sackett* case, hoping it gives us clarity so that we can get a rule that is clear, so that we can provide clean water like we always do because water is a resource that goes on farms and some have been there for generations. And the last thing we want to do is hurt the natural resources on our farm because our families live on it and drink the water and we want to have a clear rule to make sure we know how to abide by it.

Mr. BACON. Thank you for your perspective. A follow-up question on trade with you, Mr. Duvall. Is China meeting its trade requirements or agreements that were stated under the previous Administration? Are we holding their feet to the fire?

Mr. DUVALL. Could you repeat that again?

Mr. BACON. Is China meeting its trade agreements that they made with the previous Administration? Do we need to be doing more to hold their feet to the fire?

Mr. DUVALL. Phase one trade agreement was huge for agriculture. And did they meet it totally? No, and they didn't meet it

in the second year of it. But that trade agreement was really helpful to our farmers and ranchers and put us in that market to be able to sell to them. And we need more trade agreements like that, but we need to hold their feet to the fire just like we need to hold Mexico's feet to the fire when it comes to biotech and their discussion around not taking our corn.

Mr. BACON. Mr. Rosenbusch, the herbicides, pesticides, or fertilizers that have tripled or quadrupled in cost, has it become better for our farmers right now in this area, and what can we do to do better?

Mr. ROSENBUSCH. Yes, so thank you for that Congressman Bacon. And, as I mentioned in the testimony, we have seen a softening in the market recently, so prices have come down, in some cases, half the cost of what they were last year. Several reasons for that: One, I think farmers are waiting, a wait-and-see approach, and so that softened the market a little. But some of the global markets, as I referenced, have also opened back up, so you see a lot more product moving that impacts that supply and demand all over the world, whether it is India or Brazil.

So I think, going into the spring, that wait-and-see approach has impacted where we are today. But I think long-term we also have to just look at what that global stock-to-use ratio is and the fact that we still need to be planting acres and crop prices are still going to be high, and so that is going to lead to more demand. So that volatility has been what has been most impactful.

Mr. BACON. Thank you. And, Mr. Chairman, I yield back. Thanks.

Mr. DUVALL. Can I make a quick statement to that? We may wait around, but when it comes time, you got to put that fertilizer out? If you don't, you miss the window and you are less productive.

The CHAIRMAN. Good point. The time has expired.

Now, I am pleased to recognize the gentleman who really helped us host a great listening session in the Central Valley in California.

Mr. COSTA. California.

The CHAIRMAN. Mr. Costa, for 5 minutes.

Mr. COSTA. Well, thank you very much, Mr. Chairman and Ranking Member. And it was a good listening session that we had with the Committee. And those Members that were able to attend, I think we were able to pick up a great deal of information.

I think when we look at today's topic on uncertainty, regulations, and inflation impacting the farm country, I am reminded of the fact of a third-generation farmer that, they ebb and flow over decades. Certainly, uncertainty is always a question and change is constant in farming for sure. The regulatory structure continues to be challenging, and it varies from region to region, state to state, as well as on the Federal level. But it is important that we raise these issues and we hear from leading agricultural organizations about the impacts on farm country because representing a very significant farm area in California and a third-generation farmer, I understand and hear these every day.

And I remind people two things: One, food is a national security issue. It is a national security issue. And I think maybe with the impact, sadly, of the pandemic, people, when they saw shortages on shelves, maybe began to understand that the food that they enjoy

every night may come from a grocery store or from their favorite restaurant, but that is where they get it. That is not where it comes from. It is hardworking farmers, ranchers, dairymen and -women, and farmworkers that frankly put that food on America's dinner table every night.

The second thing I think is important for the purpose of this hearing is—and I say this all the time going back to my years in Sacramento—farmers are price-takers, not price-makers. And people think, well, what do you mean by that? Well, I mean, you put all those input costs throughout a year into your crop, and so at the end of the year, you may have X invested in that crop but the price that you are getting is Y. And you can say, well, I can't make it with Y because I lose money. I need something else. Well, the fact of the matter is you are a price-taker. You don't have the ability to set the price for your inputs. And that is important to note when we think about the farm bill this year and the safety net that it provides for American farmers and ranchers and also for the nutrition programs as well. And I am thankful that many of you have mentioned the importance of the nutrition programs.

One of the things we haven't talked about in terms of the security and the impacts we have seen under the regulatory and supply chain effort is the impacts that we have seen when our food supply chain was turned upside down. It resulted in a bipartisan effort on the Ocean Shipping and Reform Act, which Congressman Johnson, Garamendi, and I moved forward. It was signed into law and implemented now, and we are looking at this critical piece of legislation.

Mr. Friedmann, I would like to thank you for your participation in this. Can you explain the impacts of holding global shippers accountable so that we can stabilize the input for prices, getting back to price-takers and price-makers? One of the key things is in California, 44 percent of our agriculture is exported, and so this had a real havoc in terms of our ability to export and our prices. Could you please comment?

Mr. FRIEDMANN. Thank you, Congressman Costa. I began my testimony by thanking our heroes here, Congressman Johnson and yourself—

Mr. COSTA. God bless you.

Mr. FRIEDMANN.—on this Committee for accomplishing probably the greatest benefit for U.S. agriculture in foreign markets that has been accomplished in at least 2½ decades here with the Ocean Shipping Reform Act last year. It kept the U.S. and it will keep the U.S. exporters in the foreign markets.

And if I could say this, I have heard from many members that, well, I represent small farmers and they don't export or they sell to producers or brokers. How does this impact them? Guess what? During the pandemic, as you know, because some of your constituents were unable to get the products exported to the foreign market, they couldn't get it on the ships. What happens to that product? It just gets dumped onto the U.S. market, and that is the market that the smaller companies that don't export—

Mr. COSTA. Right. And we had markets, but we couldn't get a consignment to put the product on the ship to get it to market.

Quickly, we are looking at reintroducing the Ocean Shipping Antitrust Enforcement Act (H.R. 6864, 117th Congress). How do you think that could help out?

Mr. FRIEDMANN. I think it can help out by recognizing the consolidation that has been spoken about today in ocean shipping. There are now ten ocean carriers left in the world, and they are consolidating further into those three alliances. And, if we don't have an ability in the U.S. Government, which we do not now under current law have the ability to review those proposed consolidations before they happen, they are going to just continue, and pretty soon, we are going to be down to no competition for the U.S. export commerce.

Mr. COSTA. Yes. Well, thank you. My time has expired. Mr. Chairman, this is something that I think we need to work on, in addition to the farm bill this year, and I look forward to our continued effort.

The CHAIRMAN. Well, I thank the gentleman, it is all part of the agriculture supply chain.

I am pleased to recognize the gentleman from Kansas, Mr. Mann, for 5 minutes.

Mr. MANN. Great. Thank you, Chairman Thompson, for having this important hearing and to all of our witnesses that are here today.

I represent the big First District of Kansas. Last week, I had 15 town halls all over western Kansas where farmers, ranchers, and ag producers told me, like they have been saying for the last 2 years, that their businesses and livelihoods had been very impacted by increased input cost and overburdensome regulations. On top of all this, we are in a major drought throughout western Kansas and really throughout the Great Plains in this country.

From 2000 to 2020, the average annual rate of inflation was 2.1 percent, which economists consider a normal rate of inflation that helps drive overall economic growth. In 2022, input prices skyrocketed, and we saw the largest December-to-December percentage change since 1981 when everyone in this room knows full well the farm economy then crashed due in part to surging inflation. Unfortunately, 2023 does not look much more promising on the input side of the equation. USDA anticipates that production costs will increase this year to a record \$500 billion.

My question is for you, President Duvall. Does the current farm safety net provide adequate risk management to cover these expenses and reflect the risks that our ag producers truly have in modern-day production agriculture?

Mr. DUVALL. No, it doesn't. It needs to be modernized. It needs to be studied and reflect the true cost of production as of today.

Mr. MANN. I wholeheartedly agree, which is why farm bills are 5 year bills to be updated with the times, incredibly important.

Mr. DUVALL. And that is why, painfully, our members asked for the baseline to be broadened.

Mr. MANN. Yes. Yes. At a time when inflation is at a 40 year high, Congress should be working to eliminate barriers for the ag sector, not hamstringing our hardworking Americans with government overreach. Given all of this, I am concerned especially with the Biden Administration's rulemaking under the Packers and

Stockyards Act, including their proposed rules on transparency, inclusive competition, and market integrity. USDA has stated that it is its intent to clarify that parties do not need to demonstrate harm to competition in order to bring an action under Section 202(a) and 202(b) of the Packers and Stockyards Act.

These rules, if finalized, would profoundly alter the operation of American protein markets and have devastating impacts on the quality, efficiency, and innovation of American animal agriculture. Producers would lose the ability to reap the financial rewards of their superior performance and product, and consumers will be saddled with higher costs for lower-quality products. These rules, in my view, are an egregious example of regulatory overreach, which will harm producers and consumers.

Mr. Brown, if finalized, what effect do you see that these rules will have on the quality of animal protein available to consumers at restaurants and grocery stores across the country?

Mr. BROWN. Thank you for your question. I think I could sum it up in one sentence. Basically, what these rules would do is turn any interaction between a processor and a grower into a litigation flashpoint. It is going to add cost, and, at the end of the day, it is not going to help our growers.

Mr. MANN. Yes, I agree. And at the end of the day, the consumer is going to lose as well because they are going to be paying more for a lower-quality product.

Mr. BROWN. And back to a point I made earlier, you expand the government, taxpayer has got to pay for it, and then they get to pay for it again when they go down to the grocery store.

Mr. MANN. Yes. Yes. I am also concerned with the EPA's recent proposed revisions to the interim decisions for Atrazine, an important herbicide that corn and sorghum growers in my district and across America rely on to increase yields and implement conservation practices. The decision included a picklist of mitigation measures that EPA developed without feedback from USDA that producers would be required to implement when using Atrazine. While I understand that the USDA does not have final say in the regulation of crop protection tools, I believe that EPA can benefit from the ag expertise of scientists and staff at the USDA.

Question for Mr. Twining. How can the EPA and USDA work together to ensure producers continue to have access to the tools that they rely on in modern-day production agriculture?

Mr. TWINING. Thank you, Congressman Mann. I would say just in general everybody has opinions. I like to live in a world of facts. And the USDA has several subject matter experts that understand the practical implications of regulation and pesticide management. Currently, my understanding is there is no direct requirement for EPA to coordinate with USDA when it comes to developing things like mitigation matters. So we would support that requirement and a formal connection between the USDA Office of Pest Management and EPA to make better logical rules.

Mr. MANN. I see my time has expired. Thank you, Mr. Chairman. With that, I yield back.

The CHAIRMAN. Well, I thank the gentleman.

I am now pleased to recognize the gentlewoman from Virginia, Ms. Spanberger, for 5 minutes.

Ms. SPANBERGER. Thank you very much, Mr. Chairman.

I was just with the Farm Bureau in Virginia in Madison County, where I held a roundtable with many of the producers from our district. And so I just want to thank all of the organizations here present for the work that they do in advocating. I also want to thank Mr. Brown because among the things that we talked about was the Highly Pathogenic Avian Influenza, the impact that that has had on the poultry producers in my district, certainly, we know in the grocery store on the cost of eggs, the death of birds, and frankly, the dire issue it creates for producers and families, and importantly, for the veterinarians who are trying to deal with this outbreak. There were discussions related to the shortage of penicillin, and I would love to follow up on that topic in the future so that we can make sure that we are strengthening our ability to fight back against any type of illness that might be impacting our animals in the future.

Mr. Duvall, I really want to thank you for your discussion and in your opening remarks talking about the national security implications of a country that can't feed itself. As a former intelligence officer, certainly, that is central to my view of our work in supporting Virginia's agriculture but certainly agriculture across the country.

And, Mr. Friedmann, your discussion about the transportation impacts of the Ocean Shipping Reform Act, which I was proud to support, and also the challenges that we are facing because of changes in the trucking industry and aging workforce. These are all issues that I continue to focus on because the producers in my district say that it matters to them. And certainly, we see that trend nationwide.

I am grateful to my colleague Ms. Adams and Mr. Larew for talking about consolidation within the meatpacking industry and the enforcement of antitrust laws that exist on the books. And I am also really proud that we have seen localized processors—and Mr. Johnson has been a partner with me working to make sure that we can have local processing facilities. Certainly, we have one getting built out in my district that is really going to matter to our growers.

But my next question, well, my first question, actually, is aimed at Mr. Larew. So I really want to thank you for highlighting an issue that I know impacts many of the producers I represent, and that is senseless restrictions and barriers that prevent them from repairing their own equipment. I have been working closely with Senator Tester on this issue and hope to be introducing legislation in the House that would ensure that farmers have the tools necessary to repair their own equipment. Farmers should not be held ransom by big corporations when it comes to the literal tools of their trade. So could you just talk about some of the current legal barriers and liabilities that face farmers who try to fix their own equipment that they own or that have to rely on a third party to do so?

Mr. LAREW. Yes, I think it is a pretty shocking issue for a lot of folks who aren't familiar with it that, if for some reason you went to take your car, your pickup, and you weren't allowed to take it to the shop there in town but you had to take it to the dealer if

you weren't allowed to work on it yourself. And so the auto industry actually took care of this a number of years ago, but in farm equipment, certainly, with the adoption of additional technology, farmers are currently—or any producers are not allowed to touch—to access the codes to fix their own equipment or to get any independent. This drives up cost of that. It impacts harvest, for example, if you have harvesters broken down and you can't get your miles from anybody to get that repair, so—

Ms. SPANBERGER. Because you have to wait for somebody to come who is allowed to come and fix it. You have to wait for that—

Mr. LAREW. Absolutely. For somebody to actually have the sensor to be able to show what is actually wrong with this. This barrier, we have had promises in the past from the equipment manufacturers that they will allow access to this information and allow some independent repair. That, however, did not come through, so we need to see laws on the books to enforce that right to repair.

Ms. SPANBERGER. Thank you very much.

And, Mr. Duvall, in the limited time I have left can you just speak to the importance of maintaining the high funding levels for the conservation title in the farm bill? How do you see continued access from year to year to voluntary—and I stress that point, *voluntary*—conservation programs that help farmers and producers certainly like they do in my district? How does that provide them with certainty for their bottom line?

Mr. DUVALL. Sure. As our society moves more and more toward discussion around climate, there is going to be more asked of farmers and ranchers, and to do that, we have to have voluntary programs that we can volunteer for and have participation from everyone to help us put that on the ground, so it is important. And if you look at the history of the programs that are there in conservation, they have been sorely under-funded and highly—the applications for are out the ceiling. And hopefully, we will have the funding to be able to put those practices on the ground. And then the next problem is the technical support in USDA to help our farmers put it on the ground. That is a very interesting thing that everybody needs to be aware of.

Ms. SPANBERGER. A huge issue. And with that, Mr. Chairman, thank you for your indulgence, and I yield back.

The CHAIRMAN. I thank the gentlelady.

And now I am pleased to recognize the gentleman from the rice and duck capital of the world, Mr. Crawford, for 5 minutes.

Mr. CRAWFORD. Thank you. I wish you had had better luck when you were there.

The CHAIRMAN. Me, too.

Mr. CRAWFORD. First and foremost, I am concerned about the Administration's rulemakings under the Packers and Stockyards Act, and I think it would have negative effects on the cost and quality of protein products for U.S. consumers and that USDA is in fact overstepping their authority in making these rules. Congress last spoke to this issue in the 2008 Farm Bill and again blocked USDA from making similar rules from 2012 to 2015. In its latest attempt to circumvent the will of Congress, USDA has taken the unusual step of breaking their proposals up into four distinct parts, which will obscure the true economic impact of their proposal and make

it difficult for affected stakeholders to accurately assess the full implications of their proposed changes.

Last September, my Republican colleagues and I on this Committee sent a letter to Secretary Vilsack warning him that these rulemakings likely violate the major questions doctrine. And despite the Secretary's outlined response, my concerns remain today and will go forward.

Switching gears a little bit, Mr. Twining, in your testimony, you mentioned free and fair trade among ag producers and customers, and I would argue that free and fair trade are not necessarily the same thing. But for the purposes of our conversation, can you help us identify any duties and tariffs that have impacted the price of fertilizer?

Mr. TWINING. Well, yes, Congressman. Most recently—and it is important to understand our particular business operates on the coast. The supply chains for the coastal regions of the U.S. are very different than for the central parts of the country. We are much more dependent upon ocean trade and imported products to support our farmers, and a lot of the domestic production cannot reach us. And most recently, there was a proposed tariff on UAN solution, which is the nitrogen source our growers use. Fortunately, it was not approved. But that type of tariff would have been very detrimental to the competitiveness both of American agriculture in general, as well as the viability of producers on both coasts of the country.

Mr. CRAWFORD. So there was a tariff proposed, and who proposed that tariff?

Mr. TWINING. CF Industries, I believe, proposed that tariff.

Mr. CRAWFORD. Okay. We have seen this Administration impose and release tariffs on fertilizer from both Morocco and Trinidad and Tobago. I think we need to look at farmers' input costs from the fair trade perspective to give producers the lowest possible input costs available.

Mr. ROSENBUSCH, in light of your industry's record profits, what are the intentions of the industry to address the critical needs that the U.S. producers have dealing with record-high input costs for domestic producers?

Mr. ROSENBUSCH. Yes, thank you, Congressman Crawford, and your expertise on fertilizer is always appreciated. I would say that we live in a globally traded commodity—we are a globally traded commodity that relies a lot on supply and demand. And so as we think about what is going on geopolitically with Russia, with Belarus, with China, all of those, as you mentioned, and trade restrictions that China has put on some of their exports have an impact on the farmer right here in the United States. So, from a free markets perspective, you are going to see price setters such as Europe, which is the marginal producer right now with high natural gas costs that is going to drive up that cost of fertilizer right here for United States farmers.

And furthermore, I would say that, if you think about it, it is hard to put fertilizer all in one category, but, generally speaking, the American farmer actually has fertilizer available at a discount compared to a lot of the competitive farmers in Brazil or Africa or other places. So, I think ultimately looking at opportunities to ex-

pand production and capacity is definitely on the agenda. I think that some of the regulations and the permitting challenges that we face, restrict some of that. And so whatever this Administration and Congress can do to help bolster that supply would be terrific.

We had one member that runs a phosphate mine spent 10 years already and \$32 million to expand phosphate production. So that kinds of assistance would help ensure we have more nutrients available.

Mr. CRAWFORD. Thank you. And real quick, switching gears, this farm bill, Mr. Duvall, it is becoming abundantly clear that we will need to make a push to increase PLC reference prices. Give me a good reason why it is food security, it is national security, why do you believe it is so important that we address that PLC reference price?

Mr. DUVALL. Well, just like a nutrition project program is a safety net for people in this country that need help at that point in time, when farmers go through a disaster of some kind, whether it be weather, whether it be prices, or whatever it might be, that safety net needs to be strong, and it does not reflect today's cost of production.

Mr. CRAWFORD. I appreciate that.

Mr. Chairman, I yield back.

The CHAIRMAN. Well, I thank the gentleman. Now I am pleased to recognize the gentleman from Iowa, Mr. Feenstra, for 5 minutes.

Mr. FEENSTRA. Thank you, Mr. Chairman. This is a really important—

The CHAIRMAN. Oh, I am sorry, I messed up my order, My apologies. I am now pleased to recognize—we will get back to you, Randy, I promise you, and we will let you start from the very beginning, too. You will get the full 5 minutes.

I am pleased to recognize the gentlelady from Ohio, Ms. Brown, for 5 minutes.

Ms. BROWN of Ohio. Thank you, Chairman Thompson and Ranking Member Scott, for holding this hearing today. And thank you to our expert panel for being here. Your perspectives are helpful as we look ahead to the next farm bill.

Over the past few years, our nation has faced a once-in-a-lifetime pandemic, historic weather disasters, exasperated by the climate crisis and challenging trade wars, all of which have contributed to rising costs throughout our food chain supply. On the front end of the supply chain, farmers are facing record-high input costs and production expenses only to face a market that is increasingly volatile and uncertain.

So this question, gentlemen, is for Mr. Larew. In your opinion, what are the biggest contributing factors to the instability farmers are facing in the market today?

Mr. LAREW. Well, that is a great question. And I am trying to quickly think about how to sum it up because there are enormous challenges that face farmers. And, as farmers, we are used to volatility. We are used to uncertainty in a lot of ways. But as you well point out, right now, that is being exasperated by climate change. It is being exasperated by pandemic and supply chain disruptions.

I might just say that one of the biggest challenges that we are facing that we are having to come to bear with right now is that

the pandemic in particular showed that while we have a very efficient food system, the envy of the world in many ways, and certainly the safest, what we don't have is a resilient food system, and that ultimately impacts farmers very directly and consumers because the more that we can spread out, process, and create market opportunities, that is much better for farmers, it is better for those rural communities, and then that ultimately feeds all the way back up to better opportunities for consumers on the other end.

Ms. BROWN of Ohio. Thank you for that. And furthermore, underserved producers, including Black farmers and other producers of color, have been particularly hard hit by the impacts of inflation on input and other costs. So to Mr. Larew and any other witness who would like to jump in, can you describe actions taken by this Administration to aid underserved producers and whether you have any suggestions of things we should explore in terms of risk management to enhance the availability and accessibility of programs for underserved producers?

Mr. LAREW. Yes, it is important, and certainly this Administration has taken a hard look at it. I think time will tell what the impacts of that are. But they certainly have tried to, through some of the programs and funding that they have issued, really taken a focus on making sure that those who are underserved, those who have had historically lack of access, whether it is capital or any access to any of the programs. So I think that this ongoing focus, whether it is as we look ahead to the next farm bill or any proposals that we are looking to add, this question of equity and inclusion is going to be an important one. It is one that we made reference earlier. Mr. Duvall down there at the Farm Bureau, along with many other organizations through the Food and Agriculture Climate Alliance, those recommendations had the very important input of the Federation of Southern Co-ops, making sure that equity and access to capital and access to these climate-smart programs are available to everyone.

Ms. BROWN of Ohio. Thank you. Anyone else?

Mr. Duvall?

Mr. DUVALL. Yes, ma'am. The things of the past, they should not ever happen again. And we need to make sure that USDA, our organizations, and everyone, our outreach needs to be better. We have recently in last 3 or 4 years, reached out to MANRRS (Minorities in Agriculture, Natural Resources, and Related Sciences), AFA, and other youth organizations to make all youth from all parts of life to be aware of what they can participate in our organization, give them information as to what agriculture holds for them, where their place could be, and give them an opportunity to know what the programs are out there, whether it be through USDA or some other places that they could take advantage of to be more involved in agriculture. There are more jobs in agriculture than there are graduates wanting them, and there is no reason for anybody to be discriminated against because we need all those brilliant minds, regardless of where they come from, and we need them now because looking at the future of our food production and talking about it being national security, it is at an emergency level that we find out how we make agriculture attractive to young, intelligent minds.

Ms. BROWN of Ohio. Thank you so much.

Mr. Chairman, while we talk about inflation, uncertainty, and the rising costs on the front end of the supply chain, I would be remiss not to mention the same inflation and uncertainty is hitting families on the opposite end of the food supply chain in the form of high prices at the grocery store. So while we are discussing mitigating ways to alleviate the farmers' pain, we must also discuss how to assist families, particularly those who have fallen on hard times in the form of protecting and strengthening our SNAP program.

And with that, Mr. Chairman, I yield back.

The CHAIRMAN. I thank the gentlelady. And inflation definitely doesn't discriminate. There is no doubt about it. It is a heavy weight on everyone.

Now, I am pleased once again to recognize the gentleman from Iowa, Mr. Feenstra, for 5 minutes.

Mr. FEENSTRA. Thank you, Chairman Thompson and Ranking Member Scott. I want to thank our panel of witnesses. It was impressive to not only hear your testimony, to read your testimony. This is serious times, and I am excited to be on the Agriculture Committee to work on the farm bill with the Chairman and with the colleagues on this Committee. We have an important task to do. But we also have other tasks related to the topic of the day, of the situations of inflation and regulations and uncertainty that is really affecting our farmers, our producers, and our families and small businesses. Because of inflation, because of the high costs of inputs, that obviously is raising commodity costs, that obviously raises food costs. It all goes together.

Traveling my 36 counties, I have the second-largest ag-producing district in the country, and I have heard from my farmers and local leaders about the hardships they are facing when it comes to accessing capital and dealing with the burdensome regulations.

So, Mr. Duvall, I want to talk to you about one of the biggest challenges that I have heard is farmers facing affordable access to capital, meaning that over the last year and a half, we have seen interest rates dramatically climb, doubled, more than doubled. And we see the Fed now saying, "Hey, we are not tamping down inflation," that inflation is still rising at an alarming rate, obviously highest in 4 decades. This really affects farmers because now they are trying to get a credit line either to buy livestock or to put in their crop this spring, and yet banks are going, wait a minute, this is your interest rate. I mean, this is a real problem. I was wondering if you could address that and how it stifles production, and then also how it stifles new precision ag technologies for getting on the market to create more efficiency.

Mr. DUVALL. Yes, of course, and thank you for the question. Availability of credit is crucial to agriculture, not just when you get into the business; but, we have a medium-sized farm that might borrow \$1 million to put a crop in the ground. Who in the world does that knowing that we have to depend on rain and all the elements and what might happen to do that. And of course the banks are trying to be protective of the assets that they—capital that they loan us, but that is why the programs are so important. It gives a foundation and a safety net not just for farmers, but for lending institutions, the people that buy the food at the grocery store, and

everyone. That is why it is so important. It does stifle technology. And technology is what keeps us efficient, sustainable, and on the cutting edge and competitive to the world.

Mr. FEENSTRA. Well, thank you for those comments, and you nailed it. And this is why when we have inflation and we have interest rates growing at a fast rate, it is just crushing our farming community. And how we want to create more efficiencies and more effectiveness, we can't because of the cost of interest.

Mr. DUVALL. I farmed during the 1980s, and I remember going in when we didn't have 24 hour news and there was some farmer that was upside down on the news that had hurt himself or someone because of the stress he was under.

Mr. FEENSTRA. Yes. That is right.

Mr. DUVALL. Interest rates are crushing, and our young farmers, whoever they might be, are going to feel the brunt of that worse than they have ever seen before if it continues to rise.

Mr. FEENSTRA. Yes. I agree 100 percent, and there is no end in sight right now. And the Fed has said this, that they don't know when these rate increases are going to end.

Mr. Twining, I got a quick question for you. The other thing that I am hearing from my 36 counties and ag people is obviously the *Waters of the U.S.* and the unprecedented ruling that came down from the EPA where they doubled down on expanding the significant nexus test on navigable waters. And you think through what this actually does, I mean, I think about being a farmer and all of a sudden you have water in your creek or your pond or coming out of one of your tiles and now all sudden is regulated by the EPA. I mean, frankly, whether it be plowing, moving a fence, putting in a fence, it is all now under the jurisdiction of the EPA, which in essence could fine them if not done correctly or if they didn't get a permit. Again, not even thinking about it, the farmers would have to get a permit if this is actually the case. Can you explain further to me how this is truly detrimental to our farming community and how our farmers probably know best?

Mr. TWINING. Yes, sir. We deal with growers from 20 acres to 12,000 acres as an ag retailer, and we are on their operations every day. And you did not have the certainty that you can perform any type of operation, whether that is an application of a pest control product or a plant nutrition product or to do something as simple as plant or harvest a crop based on whether or not we got a big rain the night before.

Mr. FEENSTRA. That is right.

Mr. TWINING. And to not have that clear definition creates tremendous uncertainty that really just paralyzes our ability to do business and to produce food in an efficient manner.

Mr. FEENSTRA. Yes, I appreciate your comments, and thank you. I am out of time. I yield back.

The CHAIRMAN. I thank the gentleman. And now I am pleased recognize the gentlelady from Colorado, Congresswoman Caraveo.

Ms. CARAVEO. Thank you, Mr. Chairman. And thank you to you and to Ranking Member Scott for hosting this hearing today and to the witnesses, thank you so much for being here. I am very excited to be participating in my first Agriculture Committee hearing,

and I am glad that it is on this very important topic on the challenges of our agriculture producers and what they are facing.

I represent three of the largest ag-producing counties in Colorado, including Weld County, which is actually the largest ag-producing county outside of California. My ongoing conversations with farmers and ranchers reflect the real concern heard here today on high costs, weather, and climate uncertainties. Colorado farmers actually recently saw the State House approve a Consumer Right to Repair Equipment Act (HB23-1011). So thank you to Mr. Larew for your comments earlier. What the law there in Colorado would do is require manufacturers to provide parts, software, and tools to independent repair providers and equipment owners. And so I think that this is also a very important topic that we need to take on at the Federal level.

I know that in my family when we are talking about repairing things, what my niece always tells my dad as he is fixing his truck or something around the house is “Abuelo, just Google it.” And that requires broadband access, something that I know in parts of Colorado is very difficult, especially for beginning and small family farmers and ranchers. They have to take on the cost of broadband on top of inflation.

So, Mr. Larew and Mr. Duvall, I would love to hear you talk about the importance of affordable broadband being available to rural communities, especially for our farmers and ranchers.

Mr. LAREW. It is critical. You have heard one of the themes that has been mentioned several times here about farmers’ ability to innovate, right, and to get creative, whether it is googling or a new repair or something. But that requires access to that technology. It requires the ability to communicate. And whether it is high-end equipment out there that is connected or whether it is your family trying to make sure that you can have an on-farm job if you will in order to cover health insurance. We haven’t even talked about this issue today, but so many farm families have someone that works off the farm because of the challenges that we are talking about, because of those thin margins that are out there, and because of the lack of affordable health insurance in some cases. So on-farm income or kids coming back to the farm is made much more accessible when there is high-speed internet.

Personally, when I am at the farm in very rural West Virginia, just across the Allegheny Mountains and south of here, if I want to be able to have a Zoom call, just a simple Zoom call with somebody, I have to drive 25 minutes to the truck stop, sit in the parking lot, and have that conversation, and then get back to the farm. That is not efficient, and that is not a way to move things forward.

Ms. CARAVEO. Mr. Duvall?

Mr. DUVALL. He is telling the truth. I have seen him sitting in there because we have a lot of Zooms together. You are exactly right. And as we talk about society thinking more about climate, all that new technology is going to require us to have broadband. And without that broadband, small-, medium-sized, regardless what size you are, what is not going to be available to you, you are not going to be able to use it.

Collecting data, data is—who knows what it is going to be worth to the farmer because he owns all that data on his crops and his

tractors and everything that—and what that is going to be worth to him someday, we don't have a clue what that is. But without broadband, we can't collect all that and be able to store it and do the right things. And just as important is cell phone service. Farmers live a lonely life, a lot of times miles and miles and miles from anyone. And just to have the security of having something, you can contact somebody in case something happens. And our business is only second to mining being the most dangerous business in the country.

So there are a lot, a lot of reasons, but this is the one I don't want everybody to forget. Our rural communities are drying up and going away, and our young people go to college where they have great internet and they learn all these wonderful things. We are moving toward a society that more people are working from home. We want those young people to go home and work from home, but they are not going to be able to do it without good broadband service.

Ms. CARAVEO. Thank you, gentlemen. I yield back my time.

The CHAIRMAN. I thank the gentlelady. Now, I am pleased to recognize the gentleman from Minnesota, Mr. Finstad for 5 minutes.

Mr. FINSTAD. Thank you, Mr. Chairman. And thank you for having this important hearing today. And to each and every one of you up there, thank you so much for being here and the work that you do for the greatest population of folks in this country, and that is our farmers.

I am a proud fourth-generation farmer myself. I like to tell people I grow corn, soybeans, and kids. So I am raising the fifth generation.

And, President Duvall, you hit the nail on the head in regards to just engaging and bringing back youth to the farm. And I joke quite often about technology and how we have to embrace it. And in the conversation that we just had here in regards to the broadband and connectivity in rural America, my dad said he was going to retire from farming when the tractor drove itself. We got auto steer. Sure enough, he retired. My son plants corn with an iPad. So that technology and that ability to connect is so important to strengthening rural America. So thank you for your comments on that.

But make no mistake, farm country is facing several challenges, including increased input costs, the supply chain challenges, interest rates, and burdensome regulations passed down by bureaucrats in D.C. And farm and food security is national security. We have heard that said ten times here already. And so we must do everything that we can to tackle these challenges while supporting our farmers as we continue to work to feed and fuel the world.

So with that being said, maybe digging in a little bit here in regards to the regulations, and I have always said that we need to make sure that regulations are based on science, not political science. And so in regards to that, in August 2021, the Biden Administration published a final rule that revoked all tolerances for chlorpyrifos—in farm country, Lorsban—effectively banning the use of this important crop protection tool for growers, including those sugarbeet and soybean growers in Minnesota.

Administrator Regan publicly claimed that the courts tied their hands. However, the Ninth Circuit gave the EPA the option to revoke or modify those tolerances. Instead of following the science outlined by both EPA and USDA scientists that allowed for 11 safe uses, the Biden Administration chose to ban this.

So, Mr. Twining, can you talk about the dangerous precedent that this Administration has set by choosing to use political science in making this decision *versus* the science that both EPA and USDA has led us with, and then really just the uncertainty that this causes producers like myself?

Mr. TWINING. Sir, I always like to try to relate this back to experiences all of us have every day in life. So when was the last time any Committee Member had a headache? What did they do? They went to the grocery store probably and bought a bottle of ibuprofen and took two pills and got better in the morning. Now, was there risk associated with doing that? Absolutely. If you drank that whole bottle all at once, you would probably be in the hospital having your stomach pumped and you might die. But we as a society say ibuprofen, the risk is worth the reward because it is closely studied, it is labeled by a Federal agency, and we all understand and follow the directions.

It is no different with pesticides. It is no different with a product like Lorsban. Safe, effective use of these products in accordance with label by pesticide applicators who are trained and licensed—and to use that product, you have to complete extensive training and obtain a license to use it. When we take those tools away from our producers, we deny not only our producers an option to better manage and more efficiently produce food, we raise the cost for every American. We cannot allow political science, opinions, and social media to influence science. It is incumbent upon the Members of this Committee to stand firm for science and to push back against emotion and popular opinion and educate people on the use of these tools.

Mr. FINSTAD. Yes, thank you for that. I couldn't agree with you more.

Changing the subject here a little bit in the couple seconds I have left here. Mr. Chairman, I want to say thank you, and I really appreciate you bringing up the whole line speed issue. And I would just comment that I am sending a letter today to Secretary Vilsack urging the USDA to provide certainty specifically for the pork processing plants by issuing an extension of the NSIS time limited trial.¹ I have heard it loud and clear from producers in our state that it is very important. And, Mr. Brown, thank you for bringing up this issue today also.

I would just close with this comment. I appreciate your work here and you testifying. I hear loud and clear every day that crop insurance is the number one tool that producers in Minnesota really count on for that security and that risk management. I heard it brought up here again today, and I will tell you as a farmer, maybe on the hair younger side, and especially watching my seven children coming into the farm community, crop insurance is the number one tool for risk management on our farm. And so I appreciate

¹ **Editor's note:** the letter referred to is located on p. 252.

your willingness to be here today and to really commit to that. And I would just tell fellow Members here that I stand ready to help work on ensuring that we have a safe and strong crop insurance component to the farm bill. Thank you.

Mr. BROWN. Mr. Chairman, if I could just thank Mr. Finstad for sending that letter today. We greatly appreciate it. Our growers appreciate it. And it will help us be competitive in the international market, so thank you.

The CHAIRMAN. Very good. I thank the gentleman. I am now pleased to recognize the gentlelady from Oregon, Congresswoman Salinas, for 5 minutes.

Ms. SALINAS. Thank you, Mr. Chairman, and thank you to our panel.

So I heard from many of you today that weather irregularity as the result of climate change is having a direct impact on our ag sector. And in Oregon's 6th District, which I represent, some of those impacts are from new problems and challenges like extreme heat and smoke damage from wildfires and not just increased frequency or severity of the natural disasters we have previously had to endure.

Unfortunately, despite the value and size of our agriculture sector—and I am definitely hearing this from a lot of our growers; I just came back from my district work period and met with a lot of them—were often left out of the conversation because a lot of these products we produce are less common. They are the specialty crops. And so Oregon is the nation's leader in the production of hazelnuts, grass seed, Christmas trees, and blueberries. And not only that, in Oregon, a dozen commodities each have a production value of more than \$100 million. But as I mentioned, a lot of our growers really can't take advantage of some of these protection programs.

So to Mr. Larew and Mr. Duvall, my question is for both of you regarding margin protection insurance coverage. Would there be value in expanding it to more commodities and more regions of the country? Specifically, would it be possible to use this coverage for specialty crops like those in Oregon?

Mr. DUVALL. In our organization, our policy supports updating and broadening the safety net for farmers to use. If you are out there farming, regardless of what you are farming, you deserve to have the same safety net as the others do.

Mr. LAREW. Absolutely. I would just echo that. We strongly support that as well and would just also add that I keep making reference back to the work of the Food and Ag Climate Alliance in the fact that specialty crop growers in particular who sometimes don't always have easy ways to access conservation programs, *et cetera*, that that be an issue that the Committee consider as well.

Ms. SALINAS. Thank you. And just to follow up on that a little bit, as we try some of these new programs, I feel like there should be some way to really assess and learn from the start of the programs and try to figure out what can be improved upon. So how have any of these programs that you have just mentioned been received by your members, and what sort of enhancements could we make to the margin protection to make it more attractive to producers?

Mr. DUVALL. I think what we talked to earlier is to make sure that we update the cost of production and targets in it to make sure it represents today's modern-day agriculture and the cost.

Ms. SALINAS. Thank you.

Mr. LAREW. And I would just add that, whether we are talking about the margin protection or whether we are talking about whole farm type of—too often, access and entry into that kind of protection requires—if you are a very diversified producer, it can create additional burdens to even be able to have the paperwork, and the coverage isn't ultimately worth it. So ways to kind of streamline it, in addition to making sure that it is tied to cost of production I think is important.

Ms. SALINAS. Thank you. And that is exactly what I am hearing from my growers.

So just shifting gears very quickly, I would like to touch on the importance of SNAP. And I think we have heard from other Members today. I think it is often overlooked that some of our most food-insecure areas of the country and certainly in Oregon are rural. And analysis from the USDA shows that eligible Americans living in rural areas participate in SNAP at higher rates than those living in some of the urban areas. And I represent a particular rural area. Three, actually, of my five counties in my district are rural, and about 29 percent of the population are SNAP eligible. And so given that the economic impacts of SNAP tend to be stronger in rural communities than urban areas and employment, can you elaborate on how important SNAP is to—and I think you have touched on this a little bit—but how important SNAP is to rural communities and why the economic impact is so great?

Mr. DUVALL. Yes, ma'am. We come to you all and say we don't really know what the needs are in the SNAP area. That is something that you all have the resource to decide that, but we fully support it. Our farmers and ranchers give thousands and thousands of hours, hundreds of thousands of dollars of product to food banks to help people all across this country, so we believe in helping people in a time of need. So it is just important to make sure that that safety net there is for the people that are in that time in life where they need it, and the safety net is there for us to assure that we would be able to plant a crop next year, not to make a living, but plant a crop. It is a safety net. And like I said earlier, crop insurance is the cornerstone. And if it can be updated, modernized, and broadened, it could be the cornerstone of every farm out there.

Ms. SALINAS. Thank you.

Mr. LAREW. We know that our rural communities have a higher percentage of senior citizens and families who too often maybe in entrenched poverty for either lack of access to jobs, *et cetera*. So food insecurity is definitely an issue that, much like inflation, it doesn't discriminate. As someone from Appalachia, I mean, we have long entrenched challenges there in addition to great people and great resources. And so making sure that that safety net is there available for all Americans in need is important.

Ms. SALINAS. Thank you. I yield back.

The CHAIRMAN. I thank the gentlelady. I now recognize the gentleman from Tennessee, Congressman Rose, for 5 minutes.

Mr. ROSE. Thank you, Chairman Thompson and Ranking Member Scott, for holding this important hearing.

As a lifelong farmer and former Tennessee Commissioner of agriculture and a new Member of the Agriculture Committee, I am looking forward to working with my colleagues on both sides of the aisle to develop solutions to the challenges that American agriculture currently faces.

I want to go ahead and dive right in. I want to talk a little bit more about the SEC's, Securities and Exchange Commission's, proposed rule entitled, *Enhancement and Standardization of Climate-Related Disclosures for Investors*, that my colleagues have previously touched on today. In my view, if this proposed rulemaking is allowed to be finalized, it will have a devastating impact on farmers across the country. Under the proposed rulemaking, farms would be required to disclose considerable amounts of climate-related information in order to do business with public companies. In May of last year, I was proud to lead a bipartisan letter signed by well over 100 Members of Congress to the Securities and Exchange Commission, pushing back on this foolhardy proposed rulemaking.

Mr. Chairman, I ask unanimous consent to have the text of my letter entered into the record.

The CHAIRMAN. Without objection.

[The letter referred to is located on p. 253.]

Mr. ROSE. President Duvall, if this proposed rulemaking is finalized, certainly you think that public companies, by and large, will be willing to pay farmers more to account for the increased compliance costs calculating their emissions, or do you think that perhaps increased costs of this rulemaking will simply be passed on to farmers?

Mr. DUVALL. It will be passed on to farmers. And I can promise you that because we have seen regulations before end up in our laps that we had to pay for because some regulation from Federal Government was handed to somebody above us in the marketplace.

Mr. ROSE. Sure. As farmers know, we are price-takers, not price-setters, and I think you are right about that.

Economist Shelby Myers in a *Market Intel* report posted to the American Farm Bureau website last year stated that the, "SEC rule as proposed has the potential to require very detailed information from each farm that is not captured anywhere else, down to how many gallons of fuel are put in each piece of machinery and each machine's emissions."

President Duvall, as you are keenly aware, we face a huge challenge attracting and keeping future farmers as more and more young people choose not to or are unable to follow in their parents' footsteps and leave the profession. Do you feel that the burdensome and tedious prospect of potentially requiring farmers to calculate each and every gallon of fuel used on farms, as well as trying to decipher the emissions output of a wide range of farm equipment from tractors to weed eaters and even animals, might dampen the prospects of future generations joining the farming profession?

Mr. DUVALL. It most certainly will. And it will also force smaller-to medium-sized farmers to going out of business where larger farms might have the ability to do some of that or buy the machin-

ery that will collect the data for them. I mean, the tentacles to this can be long and extensive into many areas of rural America.

Mr. ROSE. And in fact, amazingly, the rulemaking from the SEC contemplates exactly forcing out providers or suppliers that can't meet the obligations imposed by the rule.

Mr. Duvall, President Duvall, I would like to expand on this issue a little bit and ask you if you could talk about the efforts that American Farm Bureau is taking to spur interest in the profession of farming for the next generation.

Mr. DUVALL. Yes, we play an active role in all our youth organizations. I mentioned earlier that we now participate in 4-H, FFA, AFA, and MANRRS and looking for others, and we won't—like I am a product of the Leadership Development Program. We want them to all know that when they come out of those organizations, they can come to our organizations, we will help them fine tune their God-given talent and let them be a leader in this great industry that we know and love.

Mr. ROSE. Thank you. Mr. Rosenbusch, one of the major takeaways from your written testimony is that you highlighted that the U.S. only accounts for about seven percent of global fertilizer production. This is obviously a troubling statistic. In The Fertilizer Institute's roadmap of solutions for Congress to consider in your written testimony, you mentioned that permit reform is essential for mining, construction of new production facilities, and our infrastructure. Can you expand on how permitting reform can help in these areas, especially as it relates to the construction of new production facilities?

Mr. ROSENBUSCH. Yes, thank you, Congressman Rose. We are exposed as a country to the global supply and demand for fertilizer, and so anything we can do to help bolster domestic production would be positive. But permitting is one of the big challenges. So I referenced the example earlier of a phosphate mine that a smaller business, small to medium business is trying to open. Ten years they have been working at this and \$32 million for that mining operation to begin. The phosphate is there. These resources are where God put them on Earth, and so we can't go in and deposit potash today, but we do have those phosphate reserves. And we just need to equip industry with the ability to do it, with accountability for review, timelines for review of these permitting, and ensure that we can go into production as quickly as possible.

Mr. ROSE. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. I thank the gentleman.

Now, I am pleased to recognize the son of a North Carolina farmer, Mr. Davis, for 5 minutes.

Mr. DAVIS of North Carolina. Thank you so much, Chairman Thompson, and to the Ranking Member for bringing us together today and to the witnesses who are here today.

So I would like to start over the course of the last few weeks in particular have gone way beyond to just have conversations with farmers in my district. North Carolina agriculture is still the leading industry and is extremely a huge part of eastern North Carolina's economy and community. Listening to the farmers in particular, I heard about fertilizer, regulations, pesticides in par-

ticular, fuel costs, so, I mean we hit on many of the things of that. I would like to zoom in just a little bit more.

In particular, Mr. Rosenbusch, you highlight the importance of onshore fertilizer production and national security and agriculture economy, as we know and you have talked about China, as gaining more and more market share, potentially leaving the U.S. vulnerable in the event of the global conflict. Among the roadmap, those legislative priorities, what I am really trying to get a grasp of—and I want to be clear. We realize there are things beyond control, our control. You hit on it, the wait and see, the global markets. But my question is within those things that are within our control, what would you say is the greatest priority that could be most impactful? Because this is something that I have heard so many raise concerns about.

Mr. ROSENBUSCH. Yes, I will name a couple that come to mind, in addition to what I have already mentioned. First of all, unfortunately, potash and phosphate are not on our critical minerals list. We have to do everything we can to make sure those two are added back to the critical minerals list for the United States. Second, I would say that our energy policy is going to have a huge impact on fertilizer production. When we think back to the pre-shale revolution, we had in the early 2000s 27 nitrogen plants that shut down because of the high cost of natural gas. So affecting policies that deliver sound energy solutions because that is the feedstock would be my second.

And then I would just say, third is just anything that is, as I think about an ag retail, any of the PSM and the RMP rules and those just incremental regulations that add to the complexity of doing business would be a third category of things that we could focus on.

Mr. DAVIS of North Carolina. Any idea in terms of moving in that direction, you talked about some decrease, and moreover stabilizing things. Do you think we could really continue to see decrease or at least stabilization?

Mr. ROSENBUSCH. You are talking about fertilizer prices?

Mr. DAVIS of North Carolina. Yes, prices.

Mr. ROSENBUSCH. Yes. So I am not allowed to talk about prices—

Mr. DAVIS of North Carolina. Got you.

Mr. ROSENBUSCH.—but I will just generally say, as Zippy mentioned, farmers have to put nitrogen down going into the spring planting season, so I think some of the softening that we have seen over the winter will begin to pick back up as demand increases and we get closer to that planting season. I think that approach to, well, let's see if we can get it at the lowest possible prices is kind of what is out there in the marketplace now. But when you just think about the fundamental supply and demand, where we are with crop prices, I think you will actually see things evolve as we go into spring and the rest of the year. And at the end of the day, farmers at these commodity prices have to maximize yield, and the way to do that is with fertilizer.

Mr. DAVIS of North Carolina. Okay. Moving on, another question going across the district—and this topic continues to come up in terms of young people. I have traveled across the district. I am

hearing from constituents the lack of opportunities to pursue careers that is vital to our local, state, and national economy here, including we were talking about transportation, trucking, agriculture, manufacturing. As you know, the agriculture industry cannot function without reliable transportation.

My question, Mr. Friedmann, would be can you give any sense of what you think the Committee can do, the work to engage either working with Transportation, T&I, to increase opportunities for young people? And I heard Mr. Duvall—and maybe I will just leave this as a comment at this point as we run out of time. How do we really make this nexus disconnection when there are so many job opportunities with the lack of our students engaging? There is some disconnect here that is going on.² And I would leave it as a comment more, Mr. Chairman, and I yield back.

The CHAIRMAN. I thank the gentleman.

Now, I am pleased to recognize the gentleman from California, Mr. LaMalfa, for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman. My apologies for being in dueling committees here today so I have missed some of the testimony and such, so I hope I am not redundant in my questions. I wanted to throw this to Mr. Rosenbusch on fertilizer, of course, being a globally traded product that is of extreme importance to American ag, as we know, and in the yields that we have made over the years. We have had, of course the Ukraine situation, Russia, China, the whole works. And on my own farm, we enjoyed at least triple the prices of fertilizer of what we had been used to previously. Can you discuss a little bit on the current Administration's actions that are helping or harming the production and procurement of the fertilizer we need, because we know how heavy an influence energy has on the production of fertilizer, as well as just getting it here. And what more could we be doing to have our domestic production of it be a much higher percentage instead of relying on imports?

Mr. ROSENBUSCH. Yes, thank you Congressman LaMalfa. And, of course, your district with rice producers didn't quite enjoy some of those same commodity prices. So it is especially painful when you look at what is going on with inputs. So I would say that, just repeating—

Mr. LAMALFA. Half my district didn't grow anything last year because of the water supply, which is a whole other issue we might get to cover, but go ahead.

Mr. ROSENBUSCH. Yes, well, water absolutely in California is a big issue. Again, I think just looking at the restrictions around permitting, critical minerals of potash and phosphate on that critical mineral list, and anything related to energy that I have already mentioned, are, of course, top of mind. I want to maybe spend a second talking a little bit about some of the U.S. Department of Agriculture's efforts here, and I would say, generally speaking, their message is correct, and that is how do we bolster more supply of fertilizer for the farmer? And I think many of our small- to medium-size enterprises and companies that were able to take advan-

² **Editor's note:** supplementary information submitted by Mr. Friedman is located on p. 260.

tage of some of those grants appreciated those, and it does spur on innovation.

At the end of the day, however, \$500 million does not necessarily open up a nitrogen plant that may cost \$2–\$4 billion to build. What will really increase that capacity is looking at that permitting reform, looking at NEPA, looking at the energy policies that will ensure we have a safe and abundant supply of natural gas as that feedstock. That is where the numbers come from.

Mr. LAMALFA. Do you believe that in this country, in this North American continent, that we have all the reserves of materials that we need to more than take care of our own needs in this country without imports? And could we competitively—if we could streamline a little bit some of this permitting or to flat out freeze and ban, would we be able to take ourselves with very little import need?

Mr. ROSENBUSCH. So I—

Mr. LAMALFA. Fairly competitively, on cost, as well availability? Sorry.

Mr. ROSENBUSCH. Yes, no, great question. I mean, on the nitrogen phosphate side, yes. With the proper policies in place, I think we can definitely take advantage of providing those nutrients to the farmers. Potash, unfortunately, is a little bit of a different story. Those are all resource-dependent of where it has been placed on this planet. And while we do have some potash reserves, we don't have nearly the supply that we would need—

Mr. LAMALFA. Remind me where most of the potash is, sir?

Mr. ROSENBUSCH. Canada is where the largest supply of potash is. And then, unfortunately, Belarus and Russia are two and three, over—

Mr. LAMALFA. Yes.

Mr. ROSENBUSCH. Nearly 50 percent of the global potash supply is in Belarus and Russia. And so we know why those potash prices are being impacted when you think about the restrictions around that.

Mr. LAMALFA. Well, we ought to be able to get along with Canada, you would think. Yes. Thank you. Mr. Duvall?

Mr. ROSENBUSCH. But I will say, though, that that then requires good transportation policy, rail, cross-border transportation, *et cetera*.

Mr. LAMALFA. Yes, the railroads, we got to keep them working, and they have had their issues lately.

So, Mr. Duvall, I just came from the Transportation and Infrastructure hearing where we talked heavily about the *Waters of the United States* regulation where we are working on a CRA to put it back in its place here instead of it regulating every ditch, every drop of water that falls from the sky seems to somehow belong to the government and in their jurisdiction. Do you think are we right to try and do the CRA right now or wait for the Supreme Court? Because where I see it, this WOTUS is extremely harmful right now. We only got a little time.

Mr. DUVALL. Yes, we are. We urged the EPA not to turn this new rule loose until the second case was ruled on, but they had made a commitment and had to come out with that rule. Are we wise to do it now or wait until the ruling comes out? I am not qualified to answer that question. All I know is we are hoping there is going

to be a ruling out of Supreme Court that might help us and that we can change that ruling to where it would give us some clear rules so our farmers won't be burdened by the regulation.

Mr. LAMALFA. Yes. Well, the hypocrisy of it—and I will yield here in a second, Mr. Chairman—is that we have a rule in place. EPA is trying to change it real quick and make it really worse for ag and for production to little good effect, and then wait for the Supreme Court. It seems to me if we just freeze everything to what it was without them put the new rule in and then gets a Supreme Court ruling on it, that might be pretty good. That is more or less what we are trying to do. So thank you for that. I yield back, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. I am now pleased to recognize the gentelady from Illinois, Congresswoman Budzinski.

Ms. BUDZINSKI. Thank you, Mr. Chairman, and thank you to the panelists for being here today.

My question is for Mr. Larew. I represent central and southern Illinois. We are lead producers of corn and soybean. So my question is really about biofuels, and if you can kind of further elaborate on what you have testified to and the impact on the development of biofuels that support rural communities. Like so many of the communities that I have the opportunity to represent, I often say that biofuels is kind of a three-prong winner: One, it can reduce the price of gas for consumers; two, it can reduce our carbon footprint; but also third, and really importantly, it supports our family farmers in central and southern Illinois.

And so I was really excited about the recent announcement by United Airlines and the airline industry about how they are looking at utilizing biofuels in jet fuel. And so I was just hoping, Mr. Larew, if you could explain more about how these types of investments and support for biofuels can support our rural communities, create jobs, and other positives I think that it can get at for our agricultural communities.

Mr. LAREW. No, you are absolutely right. I think you said it best, actually, that biofuels in general are a win-win-win. It is great for our rural communities, again, talking a lot about those diversified markets and making sure that farmers have options. It returns that economic value back to the community. It also does reduce cost to consumers at the pump, which is obviously of great concern right now with inflation. And then on top of that, it is also a win for the climate and climate mitigation. If you want to look for ways to pull carbon out of the process right now, and particularly in the fuel space, replacing petroleum products with ethanol and biofuels in general is the most immediate way to do that. And so I think that this combination if you will, this triple win for consumers and the public, for those communities and those farmers and for sustainability and climate, I think puts biofuels in a great spot. And this diversification is going to continue. You made reference to sustainable aviation fuel. We certainly want to make sure that, as we do look at that, that our farmers are able to produce the feedstocks to go into that and that we don't have restrictions that limit that availability. So certainly, we are hopeful and we want to keep making that move, but there continues to be a bright spot on the horizon for biofuels in general. Thank you.

Ms. BUDZINSKI. Thank you. And since I have a little bit more time, maybe if I can ask an additional question. In my district, I get the opportunity to represent the University of Illinois. Archer-Daniels-Midland is in Decatur. We often talk about how the Decatur-to-Champaign corridor is kind of the ag tech corridor. And so one of my questions is really around agricultural research, and this is for really anyone on the panel. But, how can more investments in agricultural research in the programs that the University of Illinois looking at in precision farming, also further development in looking into carbon capture sequestration as an important technology, how can ag research and investment in that actually help then save money for our family farmers through that technological investment?

Mr. DUVALL. Yes, those research dollars that are spent in our land-grant colleges are so important to agriculture. It not only keeps us on the cutting edge and makes our farmers sustainable, it also discovers some of the basic discoveries that industry picks up and refines and brings on to the farm to help us do an even better job. So research and development dollars are crucially important.

But I don't want to stop there. I want to talk about what extension does. Since my grandfather, the extension agent has been and still is the person that a small-, medium-sized farm depends on to get that knowledge from the land-grant college to the farm itself and that farm family.

Mr. LAREW. I would just add, quite frankly, that while the land-grant universities are an important spot for a lot of that research and making sure that we are keeping that research well-funded so that the innovation can be driven, I think that, as we look ahead to the next farm bill, looking for also ways that Congress can best spur that innovation as well, even with big projects, whether it is the DARPA kind of ag version of that, I think that there are opportunities in the farm bill to make sure that we are looking big picture as well as the more applied research.

Ms. BUDZINSKI. Thank you, Mr. Chairman. I yield back my time.

The CHAIRMAN. I thank the gentlelady.

Now, I am pleased to recognize the gentleman from South Dakota, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Friedmann, you mentioned in your testimony the rulemaking proceeding before the FMC, which is flowing from OSRA, which passed last year, you alluded to the fact that rule promulgation proceedings are kind of always an opportunity for the stakeholders to relitigate areas that maybe weren't fully fleshed out by the legislation. Give us a sense on whether or not you think the rulemaking proceeding is going well, whether or not it is adhering to Congressional intent.

Mr. FRIEDMANN. Depends on which rulemaking. The rulemaking on what is the centerpiece is the detention demurrage, these extra charges that the ocean carriers are imposing on U.S. exporters, actually started off with a bang and was terrific. I mean, instead of waiting till they did the rulemaking to implement, they made it effective on the date you got that thing passed and signed by the

President, which is unprecedented. So they made it effective right away.

They are moving forward, and in fact, they have added to the very good criteria that you added to make sure the ocean carrier has the decency to tell the exporter what they are charging for those information elements. There were 12. There are now 21. In other words, they went further, which is great. There are some problems because maybe backsliding, they may decide that you can impose detention demurrage charges on truckers rather than exporters, so that needs to be watched. But that is one that is very good.

On another critical element of your legislation where the carriers were refusing to carry U.S. exports, U.S. agriculture exports particularly and they would prefer to go back to Asia, which is our biggest market, empty with a lot of empty containers so they can pick up more of the stuff that we are wearing, all the import stuff, and bring it back faster, that left a lot of our agriculture stranded, and not just stranded at the port, stranded all the way back in the middle of the country, all throughout the center of the country.

They went through a rulemaking pretty quickly on that. And we were pretty unhappy actually how quickly they moved through that without any intention, it didn't appear, to actually implement any limitations on the carrier's ability to refuse to carry exports. And now they are coming back and doing it again. To the extent you had a role in encouraging them to do that, we appreciate that, but we do need to have that continued oversight.

Mr. JOHNSON. And I do think it illustrates the fact that there may yet be room, legislative space here, for another bipartisan victory as we look at maybe an Ocean Shipping Reform Act 2.0 to put some finer points on areas where maybe the FMC didn't quite hit the target.

Mr. FRIEDMANN. Correct. And, right now when we are not in this pandemic environment where there is not this huge volume of cargo coming in and overwhelming the ocean carriers, the ports, the railroads, the trucks, there is plenty of competition by the ocean carriers to carry U.S. agriculture exports and forest products right now. But, things will change and things will happen again where we are going to have to assure there is competition, and we need to make sure that there is a mechanism by the government to review ocean carrier plans to this consolidation so that we don't wake up in a couple of years when the economy turns again and there is more demand and there are even fewer ocean carriers around. Right now, as I said, not a problem, plenty of competition. All your folks in South Dakota and all through the country are loving the ocean carriers traveling from all over the world asking for their cargo. But that is the opposite of what you were addressing a year ago, right?

Mr. JOHNSON. Well, a free market is many buyers and many sellers. Mr. Larew earlier was talking about kind of the robustness of the market and how that can have an impact on price certainly.

Mr. FRIEDMANN. Yes.

Mr. JOHNSON. And there is no question about that.

Moving to Mr. Larew, I had seen that the Biden Administration pivoted a little bit on FIFRA. They said new Administration, kind

of a new approach on Federal preemption of pesticide labeling. I have some concerns about that. Where am I wrong?

Mr. LAREW. Yes, I don't know that you are wrong. We certainly share those concerns, and we are watching it very carefully. Really seeing the U.S. Solicitor General weighing in on questions of labeling, too, is I think giving a lot of questions about this Administration and how they are approaching pesticide access and how we might see a patchwork of regulations across the country. And I think in terms of from the farmers' point of view, this is of great concern and should be something that the Committee is looking at.

Mr. JOHNSON. I am out of time, which is tragic because I have good stuff for Mr. Duvall and Mr. Brown, but I yield back, sir.

The CHAIRMAN. I thank the gentleman for yielding back.

Now, I am pleased to recognize the gentleman from Illinois, Mr. Sorensen, for 5 minutes.

Mr. SORENSEN. Thank you, Mr. Chairman. And thank you all for being here this afternoon. My name is Eric Sorensen, and I represent the farm families and the communities in Illinois' 17th Congressional District. I was born in this district where farming is much more than growing crops and raising livestock. It puts food on the table, fuel in our cars, and clothes on our backs. As my fellow Illinois colleague Ms. Budzinski mentioned, our state, Illinois, is the leading soybean producer and the second largest corn producer in our country. That is why it is imperative that the upcoming farm bill preserves crop insurance programs and fortifies the supply chains that we saw break.

It also must include robust investment in agricultural research that focuses on improving farm and community resilience so that we can address the challenges of resource quality and enrich productivity by growing more on less land with fewer inputs. Securing these provisions in the upcoming farm bill and ensuring that the \$43.8 billion in the Inflation Reduction Act reaches our farmers and ranchers, this allows us to be responsible stewards of our land, our water, our livestock, while we foster a thriving agricultural economy.

Located in my district, the Jakobs Brothers Farms have been in operation for three generations. They raise beef cattle, corn, wheat, soybeans, and rye. Sourcing parts for their farm equipment has been a challenge. And also the rising costs of pesticides and fertilizer are a great concern to them.

Mr. Rosenbusch and Mr. Larew, what can Congress do today to strengthen our supply chains, to keep costs manageable and equipment parts accessible for farmers like the Jakobs?

Mr. LAREW. Again, it is a great question, and we could probably spend the better part of the day talking about that. But just to summarize very quickly, I would just again stress for the challenges that you presented, it is much about making sure that there is fair competition and access out there in the markets. When you have a fully functioning and competitive market, that makes sure that these laws of supply and demand that we talked about a lot here are actually working and that we have true competition. And in the absence of that, we run into all sorts of challenges. That is on top of any kind of supply chain disruptions that we have.

So as far as actions that Congress can take right now, it is ensuring that we are doing everything possible to create that fair playing field out there, and then I would say on top of that, many of the things that Mr. Rosenbusch talked about in terms of creating access for even more domestic access.

Mr. ROSENBUSCH. So for the sake of not repeating some of the things I have said, I would just point out that there is a piece of legislation in the Senate side that Senator Marshall has introduced to address this exact topic called the SUSTAINS Act. So if there is one thing Congress could do is I would love for someone here in the House to pick up the companion bill here and push that forward. That would make a huge impact.

Mr. SORENSEN. My background is being the local meteorologist. I talked about climate change on television such that I didn't realize that our farm families were the ones that were watching me. They couldn't believe anybody out there, but they couldn't believe Eric Sorensen for this, and they have come to me, and they have said, "Eric, we trust that you are going to listen because so many people in Washington don't listen to us because we know things are changing, and we want to stop the politicization of climate." How can we all come together?

Mr. LAREW. I would take this opportunity to again make reference to the Food and Agriculture Climate Alliance. This is an alliance that really is unique in many ways. We have talked about the fact that Farmers Union is joined by Farm Bureau at that table, but also with the environmental community, with the food manufacturers community and forestry, as well as many in the conservation community have all come together. Many of the recommendations that we have made forward for the upcoming farm bill were all consensus. They were all focused on making sure that they were science-based, incentive-based, and really, where possible, create new market opportunities here. So if we are approaching climate with that kind of consensus and keeping a focus on the science, I think we would go a long way.

Mr. SORENSEN. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. I thank the gentleman.

Now, I am pleased to recognize the gentleman from Iowa, Mr. Nunn, for 5 minutes.

Mr. NUNN. Thank you, Mr. Chairman. And good afternoon, team. I appreciate you being out here in Washington for this. I know we all like to be looking at getting back into the field as soon as it thaws here.

President Duvall, I am going to be coming to you first, my friend. As a Member of Iowa's Third Congressional District and part of a family of century farmers in our home state, I have heard from countless farmers on the impact of inflation that has been highlighted here today. Iowa's producers and their ability to both feed and fuel, the supply chain disruptions, the labor shortages, Russia's recent invasion of Ukraine and the impact on fertilizer have all contributed to a significant hike in the price of crucial farm inputs like fuel. In just 2 years, the average price of a gallon of diesel fuel has increased by 95 percent, making it hard for everybody to not only get to that field but also to be able to harvest and feed our families. And I have six kids, so that is a big impact.

Additionally, in 2022, the average price of gasoline reached its highest level on record ever. As input costs continue to rise, farmers' abilities to ensure the continuation of abundant food supply decreases. Iowa is the number one producer of biofuels, providing a homegrown solution that positively impacts our environment, our economy, and American producers. However, the nation enters the summer of 2023 still having a ban on year-round ethanol blends that constrict our biofuel producers.

So, Zippy, one of the things I want to ask you about is how would a year-round E15 relieve the current pressure on inflation and place our farmers and consumers in a better position?

Mr. DUVALL. Well, it would lower the cost to consumers.

Mr. NUNN. Yes, sir.

Mr. DUVALL. It would bolster the rural communities where they are growing those soybeans and corn. And that is a simple fact. There is a—I call it—I am wearing my cotton tie today. There is an infrastructure around ethanol, and there is a big infrastructure around cotton. And it affects those rural communities extremely. And when you hold that back, it limits their ability to thrive and be better.

Mr. NUNN. We are going to get you a corn tie to go with that cotton tie. Thanks, Mr. President.

Mr. Brown, I would like to chat with you a little bit as well here. My home state gets the privilege of leading in egg production. But with a spike in egg prices, Highly Pathogenic Avian Influenza has received a great deal of attention in news reports across the country recently. I would like to talk about how that disease has affected specifically the chicken industry. Is there anything the industry, Congress, or USDA needs to be considering to best address that problem today?

Mr. BROWN. Thank you for your question. Between the egg layer industry, the turkey industry, and the chicken industry, we have been the least affected. A lot of that has to do with our biosecurity procedures, our housing, and our market, the way we move our birds to market more quickly. But what we can do is continue to support APHIS, who I will give high marks to for what they have been out there and doing and working with industry.

Another thing that I would like to raise while we are here is that the chicken meat industry moves about 380 million eggs a year into rendering because up until 2009 those eggs were allowed to be used in commerce for egg hatching and pasteurization, so they are totally safe. But FDA came up with a rule in 2009 knocked us out. Well, 380 million birds a year, if they could go to pasteurization, can help you respond to your constituents when they are talking about the price of eggs being too high, that is a very high volume. And if we go back to 2009 when that rule was implemented to today, that is five billion birds. I think my staff tells me 5.3 billion eggs. So that is one thing this Committee could consider.

Mr. NUNN. Mr. Brown, thank you very much. I will just end by saying to all the farmers, the ranchers, the growers, that you represent collectively on both sides of the aisle. Thank you much for your service and your advocacy for them out here. I hope that this Committee can do right by them. I wish you all a good growing season coming up.

With that, Mr. Chairman, I yield back my time.

The CHAIRMAN. All right. I thank the gentleman.

Now, I am pleased to recognize the gentleman from New Mexico, Mr. Vasquez, for 5 minutes.

Mr. VASQUEZ. Thank you, Mr. Chairman. My name is Gabe Vasquez, and I represent the Second District of New Mexico. We are storied dryland farmers that grow the prized Hatch chili that many of us put on our enchiladas across the country to go with some of that delicious chicken and livestock and beef, as well as onion, cotton, corn, alfalfa, pecans, and more.

Today's hearing focuses on issues incredibly important to the farmers and ranchers in my district, and that is the rising cost of everything. New Mexico is a vital part of the American agricultural landscape, but our farmers in our rural areas are hit harder by inflation and uncertainty than in other parts of the country.

I just recently met with dairy farmers in Doña Ana and in Luna Counties. And one of the most common problems I heard was their inability to access Federal programs or qualify for Federal programs and how expensive it was to keep their operations viable. The farms and ranches in my district are more than just farms and ranches. They are part of the fabric of our culture and our identity, and that includes our dairies. And so when they suffer, our entire district and community suffer.

Now, specific to dairies, my question is here for Mr. Larew. Mr. Larew, in your opinion, when it comes to the Federal Milk Marketing Orders, do those need to be reformed or reworked? And if so, what are some suggestions to rework them to make that program more viable for our existing dairy farmers?

Mr. LAREW. Well, I appreciate the question, and I would just—first, I am smiling a little bit only because I never anticipated being on this side of this table taking a question on Federal Milk Marketing Orders when I was in a past life have been on the back side there.

But the question is, is that we do have a lot of work to do on Federal Milk Marketing Orders, and you talk about the dairymen and dairy producers in New Mexico, the challenges exist all across the country. I think much of the work that is also being done by other farm organizations in this space I think will help lead the way.

The bottom line, though, for dairy producers, right, is making sure that they can cover their cost and actually be able to return a little bit of money there. So whether it is questions around improving Federal Order hearings and the way that voting currently actually limits individual farmer's input into that, as well as Order reform itself, I think that is something that we are very, very much looking forward to engaging this Committee on.

Mr. VASQUEZ. Thank you, Mr. Larew. In a recent study conducted by New Mexico State University showed about 15 percent loss of dairy farms over the 2 few years in New Mexico. A large part of that from what I have heard from producers is the increased feed and fertilizer costs, as well as supply chain disruptions. Under the Dairy Margin Coverage Program, very-small farms are eligible for assistance, but many farms are just large

enough to not qualify for coverage, contributing to the decline in dairy farms in New Mexico and in my district.

My next question is for Mr. Duvall. Mr. Duvall, does the Farm Bureau have an opinion of how the DMC program could be changed to include dairy farms in this coverage gap?

Mr. DUVALL. Well, first off, go back to my original statement, we want it to be modernized and upgraded, and in doing that, we think that would take care of that problem. And also, we a couple of years ago went to Federal crop and asked if we could create a product for dairy farmers that is out there right now that can be purchased for farmers to help them, and it took several years to get it done, but there is something over and above that.

Mr. VASQUEZ. Thank you so much. Now, when the government calculates inflation, it only takes into account the prices that urban Americans pay into account. This means that 46 million Americans living in districts like mine are invisible when we talk about the challenges of rising costs and inflation. To any one of our panelists, how can we address the disparity of rural *versus* urban inflation and provide relief and make good policy that helps support rural Americans that live outside of major cities?

Mr. LAREW. It is a good question. I am not sure I have—I would love to follow up as well.³ But, I appreciate you raising this question about the way that they measure inflation and that it typically certainly underrepresents, at best, the impact on our rural communities. In recent conversation with the Federal Reserve out of Kansas City, they were highlighting this question and are looking internally about ways to do that. But whatever we can do to make sure that the true picture and the true impact and cost in rural communities is able to be seen more clearly I think would certainly be something we support.

Mr. VASQUEZ. Thank you so much, Mr. Larew. Thank you so much, gentlemen, for your advocacy and your support for our farmers and ranchers in New Mexico's Second District, I greatly appreciate it.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. I thank the gentleman. I now recognize the gentleman from Missouri, Mr. Alford, for 5 minutes.

Mr. ALFORD. Thank you, Mr. Chairman. I am honored to be here today representing Missouri's farmers' and ranchers' 95,000 farms in the great State of Missouri, number two in the nation. We recently introduced our first piece of legislation, the Amplifying Processing of Livestock in the United States Act, called the A-PLUS Act (H.R. 530). Our bill works to fix regulatory roadblocks, increasing meat processing capacity, and really allow livestock auction market owners to invest in smaller regional packing facilities.

President Duvall, I would like to start with you today. In your testimony, you talked about several regulations that burden our farmers and ranchers instead of really helping them. In your estimation, how would the A-PLUS Act modernize some of these outdated rules and regulations?

Mr. DUVALL. Well, one, I am a cow-calf producer, and they are the last ones to get talked about. But I promise you that feeder and

³ Editor's note: the information referred to is located on p. 268.

that packer can't do it without us because we are producing the calves for him. We need transparency to be able to see what the market is doing so that we can better market our animals out there.

But to get to your question, that Act allowing those livestock markets to be able to participate in, we encourage that growth of that middle- to small-size processor. And we think it would tremendously help our local cow-calf guys and our local, small family feeders to be able to utilize that. And I guess the regulation around that would be whether or not there are enough Federal inspectors to go around to doing that, and are we really using technology to its fullest in that location? So I think there is a big question around that.

Mr. ALFORD. Thank you. Very good, sir.

Mr. Twining, in your written testimony, you mentioned that county-level bans on crop protection tools are ineffective, inefficient, and overly broad measures. It is something that farmers in our district are facing each and every day. Just this past year, there was a county-level ban on the use of Enlist One and Enlist Duo in 200 counties in America, including five in our district due to the presence of the American burying beetle. The EPA did decide to lift the ban in 134 of those counties in March of 2022. The problem was there was a lot of confusion and uncertainty in that among the producers right before the start of the growing season. So can you talk more about why county-level bans are a bad idea to begin with?

Mr. TWINING. This is something that, unfortunately, we face frequently, and it is very disruptive to business. You can't operate in an environment where you go from one county to the next and the rules are different. And there is not transparency on some of these and why it is important that the EPA's Endangered Species Act process include the end-users and be flexible for local conditions and specific cropping systems. The best analogy I could give you if you were trying to teach a high school class of drivers how to drive and every county had a different set of rules and regulations of the road, you would never be successful. We can't run a business in an environment like that, and neither can growers or producers.

Mr. ALFORD. Very good point. My last question goes to Mr. Friedmann. You had talked about earlier—and I am sorry we are in and out as Congresspeople because we are in three different committees at one time. We are trying to spin some plates here, but these are all very important issues. You mentioned earlier in your testimony there are ten ocean carriers in existence, right? None of those are U.S.-owned. Is that what you said? How many are owned or controlled by the Communist Chinese Government?

Mr. FRIEDMANN. There are two major [inaudible].

Mr. ALFORD. So 20 percent. We are also blessed to be on the House Armed Services Committee, and this information that has come out—really, it is been around for several years now—that China is the number one threat to our national security. If we were to have a conflict with China in the next decade or so, it is largely going to be a sea war. What impact would that have on the distributions of goods coming in and out of America on these transport ships?

Mr. FRIEDMANN. I think we have adequate carriage, the rest of the world does, because all these other ocean carriers are owned by European countries and Taiwan as well and Japan, Singapore. So, I think there is adequate coverage because, in fact, I don't think between COSCO and OCL that they have quite 20 percent because one of those—COSCO is big. OCL is much smaller. So I think there is adequate coverage if we needed to with the other carriers. And there is some additional capacity, as we learned during the pandemic, that will come in to service if there is a demand for it.

Mr. ALFORD. Thank you. Thank you to all our witnesses. Thank you for being here today. Mr. Chairman, I yield back.

The CHAIRMAN. I thank the gentleman.

I am now pleased to recognize gentleman from Illinois, Mr. Jackson, for 5 minutes.

Mr. JACKSON of Illinois. Thank you, Chairman Thompson, honored to be on the Committee, and Ranking Member Scott. This, too, is my first Agriculture Committee hearing, serving Illinois' First Congressional District in a district that is seeing an expansion of a food desert that we have borne the brunt of the consolidation efforts in the food industry. Mr. Larew, could you please speak to that and how we can turn this trend around?

Mr. LAREW. Yes, well, food deserts wherever they occur, remain an enormous challenge. We know that in rural America in lots of places where farmer communities have so far to drive to get access to any sort of food grocery store of any size. The larger question here from our perspective is, again, it is a theme that we are striking. But this question of a focus on consolidation and efficiency at the expense of making sure that there is a diversified access, in its case, access to food in these food deserts, remains an important challenge. National Farmers Union is a proud member of the Alliance to End Hunger where we work closely with a number of private companies, public companies, faith-based organizations to support, again, on these big challenges. As we look ahead to the next farm bill, we are certainly willing to work with you and others to find ways to alleviate the challenge and the problem.

Mr. JACKSON of Illinois. Thank you. A question to the general panel, are any of you concerned in your industry with foreign investment in our agricultural industry?

Mr. LAREW. We have 50 percent of our beef in the country being processed by Brazilians. We have a large percentage of much of the rest of our protein being sourced by either Chinese-owned companies, *et cetera*. The question around consolidation in agriculture is not just one about monopolies or near monopolies and the impact that that has on the free market in competition, but it is also—we keep throwing around this national security and food security, which absolutely this is about. And so to have so much of that processing and that much control in the hands of others I think raises big questions.

Mr. JACKSON of Illinois. Last question, do foreign investors have a cost and a competitive advantage structurally against our small local farmers in the United States? And if so, what can we do to level the playing field? Well, for example, I have seen in catfish prices and other things that are shipped in from China and other places, that how are they able to ship food back into the United

States? That is a scavenger fish. We are importing food from so many other countries. Is there a structural competitive advantage that they share over American farmers?

Mr. DUVALL. So I would say that, yes, sir, there is in certain areas of the world where we have to abide by certain regulations as put out by the Federal Government. Those countries may or may not have and whether or not we have the capability to really inspect to make sure they are abiding by the same rules that we are, and I would doubt that very seriously. I don't have any proven statistics to prove that, but there are a lot of regulations we have to deal with, especially when it comes to fruits and vegetables and what they have to do to send it on to the market. And there are a lot of competitive fruits and vegetables coming in here and being dumped on our market and causing real harm to our farmers.

Mr. BROWN. Sir, and I would add that a lot of the competitive disadvantages that we face against foreign competitors are caused by our own government. I mentioned to you earlier or to the Committee about the line speed issue. We got our hands tied behind our back while other nations can operate at 30 percent more.

And, Mr. Chairman, I am not looking to pick a scab or start another war at this table or in this Committee room, but talk about regulations, and everybody loves the biofuels and it all sounds great and dandy, but when that was put forward in 2007 in Bush 43's Administration and put into effect in 2008, one of the largest drivers of concentration in the chicken industry was the ethanol rule. Thirteen companies in 2 years, gone. That is all I have to say about it.

Mr. JACKSON of Illinois. Thank you. I yield my time back. Thank you, Chairman Thompson.

The CHAIRMAN. I thank the gentleman. Now I am pleased to recognize the gentleman from Wisconsin, Mr. Van Orden for 5 minutes.

Mr. VAN ORDEN. Thank you, Mr. Chairman, and thank all of you for coming today. You guys are absolute rock stars. I appreciate it greatly.

I want you to indulge me for a second so that I can frame this problem set from a slightly different perspective. I firmly believe that food security is national security and that the Biden Administration is jeopardizing our national security with their war on energy that is making it more difficult for our farmers to feed the world, our nation, and that includes our military. Napoleon Bonaparte famously said that an army marches on its stomach, and that is a true statement.

Mr. Rosenbusch, I would like to address this to you and would like your thoughts. The fertilizer market appears to have stabilized, but with the current international environment and taking in mind your quote, fertilizer is a globally traded commodity subject to international pressures and geopolitical events, I do not have confidence that this market will stay stable. In your written testimony, you presented several different charts demonstrating that China and Russia and in your verbal statement, you said Belarus, with the production of potash holds a strategic advantage over the United States of America with their fertilizer production and distribution around the world. You point out that 90 percent

of the fertilizer is used outside of the United States of America. And my concern is that through foreign aid the United States is providing food products—beans, rice, and corn—to the world where China and Russia are following the adage of give a man a fish, you feed him for a day, teach them how to fish and you feed them for a lifetime.

So my question to you is this. Do you believe if we were to onshore our fertilizer industry and production capacity, understanding that the majority of potash will have to come from Canada, who are our friends, do you believe that we could potentially remove a strategic advantage of China and Russia on the world stage and increase our strategic advantage globally? And if so, how would you propose doing so?

Mr. ROSENBUSCH. Yes, great question. I will just point out, it has been interesting to watch the China decisions around their export restrictions and a lot of speculation as to why they did that. Obviously, the line is to ensure that their farmers have the fertilizers that they need.

Mr. VAN ORDEN. Right.

Mr. ROSENBUSCH. So if you apply that to our thinking, I will say that we are a net importer of fertilizer, and we do need that supply in order to give farmers the nutrients that they need, while also facilitating expansion of our own self-reliance in fertilizer. We talk about the capital-intensive nature of these investments, and the markets are cyclical. I mean, we went through a period of years before where we currently are where a lot of fertilizer companies—and I am sure Mike can comment to this, too—were losing a lot of money and were not profitable. So I think that cyclical nature of the industry is common. And of course, we are at a different swing for it right now. But the key is we have to have that regulatory certainty so that we can make those investments in these capital-intensive facilities so that we can increase our own direct domestic capacity.

Mr. VAN ORDEN. Yes, sir. I understand that we need regulatory certainty. But would you potentially propose a large capital investment in the domestic fertilizer industry?

Mr. ROSENBUSCH. By the government?

Mr. VAN ORDEN. Yes.

Mr. ROSENBUSCH. Well, I think our companies are adequately equipped to make those investments. I don't know that we need to nationalize fertilizer manufacturing and keep that as a free market, free enterprise system. I think you can just look at India and see the challenges when you nationalize a fertilizer system. So they procure all of their nutrients as a central government, then subsidize it and provide it to the farmer. They particularly had a really difficult time because China locked them out of the market, and then they had to go source all of that on a global basis, in addition to what they do.

Mr. VAN ORDEN. That is correct.

Mr. ROSENBUSCH. So I—

Mr. VAN ORDEN. So you have confidence that the private industry would be able to produce enough capital in order to onshore our fertilizer industry in case of a national emergency or in order to

give us a strategic advantage over China and Russia globally. Is that correct?

Mr. ROSENBUSCH. I believe that they can make those investments if the permitting and the things that they need to reach those investments can be facilitated with the caveat that they are resource-dependent. We don't have potash reserves here, and we will continue to rely on our friends from the North.

Mr. VAN ORDEN. Right. Well, as a conservative Republican, I appreciate your point of view. I yield back.

The CHAIRMAN. I thank gentleman for yielding back.

I think, as most folks are aware, votes are to be called. There will be two votes called at 1:30. The first one will be 15 minutes or so. So even calculating that it is not always just 15 minutes, I apologize. I want to get everybody an opportunity to ask questions, but we are going to reduce the time to 4 minutes. And I apologize for that, but that is the result of an outstanding and great participation today, which is much appreciated.

And so I am pleased to recognize the gentleman from Texas, Mr. Casar, for 4 minutes.

Mr. CASAR. Thank you, Mr. Chairman. And thank you to the witnesses for being here today. And I want to keep working off the question that my friend Congressman Jackson brought up. I represent Texas Congressional District 35, which stretches from east Austin down to the west side of San Antonio. And my district includes several food deserts that have made it difficult for people in my community to access high-quality food. We also have a lot of folks that are working class and low-income in some of the most expensive areas of my state. One example is Del Valle community, an area of thousands of people that does not have a single major grocery store in it.

So, Mr. Larew, in your written testimony, you warn about the increasing impact of consolidation, declining competition, and how that is having impact on food deserts, food prices, and food access, impacting communities like those that I represent. Can you talk us through what Congress can do and what this Committee can do to reduce consolidation, promote food access, lower costs, and support communities like Del Valle where it is real expensive to live there, food costs going up has a real impact, and they don't even have a major grocery store.

Mr. LAREW. Yes, thank you for raising the issue again here. I think that this Committee plays an important role in making sure that there is open and fair competition, even within this Committee's jurisdiction, whether that is everything from making sure that there are fair rules and fair treatment within the livestock sector, for example, through the Packers and Stockyards Act, making sure that we are investing in additional processing and food distribution chains out there. All have these chains, whether we are talking about the groceries or the suppliers, to the groceries down to the processors, producers, ultimately finding ways to increase the investment in building out that infrastructure is going to be critical.

Ultimately, the big questions are going to be beyond this Committee's scope in the case of the antitrust laws that, again, have been on the books for well over 100 years. But it needs some enforcement review that we haven't seen for several decades. So it is

a big question, but I think that there are clear things that this Committee can be doing to be effective.

Mr. CASAR. Thank you. Mr. Chairman, I yield back.

The CHAIRMAN. I thank the gentleman and now pleased to recognize the gentleman from Ohio, Mr. Miller, for 4 minutes.

Mr. MILLER of Ohio. Thank you. Thank you, Mr. Chairman. And thank you to the Ranking Member, and thank you for all the panel today and your honesty.

Farming provides one out of seven jobs in Ohio and is the number one contributor to our state's economy. However, Ohio and U.S. farmers continue to face economic uncertainty due to unprecedented inflationary input costs, diminishing trade opportunities, and ever-increasing regulatory framework at a time when our nation's agricultural producers are called to meet global food insecurities.

Mr. Duvall, you also raised challenges for the American agriculture in your testimony detailing beginning with losses experienced from the trade war with China, pandemic lockdown, supply chain disruptions, and record input costs. Farmers and ranchers have been facing unprecedented volatility in recent years. I note that USDA has recently projected total U.S. exports to decrease eight percent over the next 10 years, causing more uncertainty. Also, United States dairy farmers are being impacted by unfair trade practices as Canada, which is our friend to the North but sometimes not so much, is not living up to its own obligations under the USMCA despite a negative ruling in a dispute resolution process concerning dairy market access. Exports are critical to the economic viability of us dairy farmers today with $\frac{1}{6}$ of all U.S. milk is sold commercially around the world and dairy products. When exports increase, the entire supply chain benefits.

Ohio State University has correlated that inflation and high food costs can have an impact on the United States' agricultural trade as when commodity input costs rise and food prices increase, trading partners pull back purchasing, therefore reducing U.S. trading opportunities for United States farmers.

So in conclusion, can you share what the loss of trading opportunities may mean for the American agricultural sector and every American and individual across this world?

Mr. DUVALL. It would be tremendous, and I can't speak exactly to dairy, but every third row of corn and every third row of soybeans either go to production of fuel that is going to be exported somewhere else. Being able to trade with other countries opens up the market for us to be able to be more productive, more resilient, and more sustainable on our farms. And we have depended on trade for many, many years. And when it is disrupted like we have seen here lately, especially before the Ocean Shipping Reform Act, it cost farmers and everyone tremendous amounts of money because exactly what my friend here to my right said, when we can't ship it overseas, it will go back into our local market and depress the prices to farmers.

Mr. MILLER of Ohio. Thank you very much. And I don't mean to pick on you, but, Mr. Duvall, in your testimony, which I enjoyed a lot, you state inflation is slashing the purchasing power of American consumers and weakening the economy, which both undercuts

demand for farm products and lowers prices. Inflation is driving up the price of groceries in Ohio. We see it every day in the Seventh District. Increasingly pinching Ohioans' budgets, farmers and consumers alike are suffering from spiking food prices. As USDA reports, food at home prices increased by 11.4 percent in 2022, it is incredible, with costs continuing to rise 7.1 percent this far in 2023.

Mr. Duvall, can you elaborate on how inflation can increase the cost of inputs, which can reduce farmers' economic viability, and in the end make it more difficult to provide affordable food for our families and to make it affordable for all of you to help us?

Mr. DUVALL. Good observation. And if you just take a family and what you have to purchase to get that family through the day and compare it to what a farmer has to spend to produce that food that they are going to produce, I mean, it is tremendous of what percentage increase that we have seen from fertilizer to fuel and everything that we do, and then you compound it with over-regulation, it even makes it more difficult for farmers to survive. And in that increase the food people are consuming or paying for food at the grocery store, very little if none of that is getting back to the farmer.

Mr. MILLER of Ohio. Thank you, sir. And, Mr. Chairman, I yield back.

The CHAIRMAN. I thank the gentleman. I am now pleased to recognize for 4 minutes the gentlelady from Hawaii, Ms. Tokuda.

Ms. TOKUDA. Thank you, Mr. Chairman. I know we have a lot to talk about ag. I would welcome all of you to come to my home State of Hawaii anytime, and we can show you what ag is all about.

The CHAIRMAN. I accept. I think you will get some volunteers.

Ms. TOKUDA. There we go. Thank you very much to the witnesses for being here. According to the U.S. Department of Agriculture's Economic Research Service, about 40 percent of farmland in the United States is rented, most of it owned by landowners, as you know, who are not actively involved in farming. In September 2022, a survey of the National Young Farmers Coalition, young farmers named finding affordable land for purchase as one of the top barriers and challenges last year.

Now, to all of you, the cost of land and rent, especially in my home State of Hawaii, is a barrier for both new as well as longtime family farmers, new farmers, and a major expense for small family farms who lease their lands. Do any of your organizations or any of you here at the panel have any concerns about private equity and nonagricultural corporate investors purchasing agricultural land? As we know, Bill Gates owns a majority, a vast majority of the farmland here in the United States. What do you feel has to be done? What is the solution for farmers that are looking at the cost of land as a barrier?

Mr. LAREW. Okay. I will go ahead and start because it is a huge question, and I am really glad that you raised the question here. But particularly for those new entrants and those young and beginning farmers, land access and land affordability is absolutely paramount. And it is been an issue for a number of years obviously. And I think we are all continuing to look for what is probably a whole collection of solutions in this process.

But I think that there are a few things that we can continue to look at. There are some states, through their Departments of Agriculture and their state legislatures, that have been creative in finding ways for perhaps retiring or farmers who want to make that transition, creating incentives and reducing some of the barriers that currently exist out there to allow these young farmers to come into the business perhaps without that overhead.

I think that this other question that you raise about those who are farming on rented land raises a lot of other questions. And I brought it up a number of times here, but I think Zippy and I are proud of the work that the Food and Ag Climate Alliance has done on the question of rented land. Oftentimes, there are disincentives for folks to participate in some of the conservation programs. And so whether we are talking about new and beginning farmers and those looking for land access or those who currently rent land, making sure that we are finding solutions to all those challenges.

Ms. TOKUDA. Zippy?

Mr. DUVALL. And one of the things, I think it was in the recommendations of the factors that we increase the lending limits at USDA on the young and beginning farmers because those limits aren't the reality of what it would cost to try to go into business. And it would be an extremely small farm if limited to the limits they have on it. Farm land ownership is a discussion that farmers have among themselves, and it crosses a line of private property rights and who should be able to tell me, well, I can sell it to the highest bidder, regardless of where they come from, is a big debate. But we should, as a country, be concerned about what the ownership is of our farmland because it goes back to who is actually feeding us.

Ms. TOKUDA. Absolutely. I will say, especially in Hawaii where we are very land-limited this is a big issue for us as well. I know I am running out of time, but I would put out there that my concern in a state that is hit by drought, flooding, wind damage, volcanoes, I am concerned about current disaster aid programs and Federal crop insurance actually being effective. Does it makes sense for farmers given how some of the reimbursements are done? Sometimes it is not a disaster declaration, but it is a disaster for our farm, so I think we have to make sure we are flexible and nimble enough to make sure we take care of those who take care of us, so thank you for being here.

Mr. Chairman?

The CHAIRMAN. I thank the gentlelady.

Now, I am pleased to recognize the gentlelady from Florida, Mrs. Cammack, for 4 minutes.

Mrs. CAMMACK. Hello.

The CHAIRMAN. Who didn't quite make it to her chair. Whoops.

Mrs. CAMMACK. [inaudible]. Okay. Can you hear me? Okay. They have us packed in here like sardines.

As the lone Republican representative for the Sunshine State—I can't believe I am doing this standing, Mr. Chairman. This is a first. We are faced with a couple of unique issues. As so many of you guys know, Florida is home to 300 specialty crops, and one of the things that is particularly concerning is the fact that we don't have a seasonal or perishable provision as part of the USMCA

agreement. I am hopeful that we can rectify that in the upcoming farm bill.

And I know we have had a lot of discussion today, very productive, about the regulatory I will call it regime because to me that is really what it is. I am going to go down the line, give you each a crack at your favorite regulation. Mine is WOTUS because I think everybody wants to take WOTUS out.

But while you all are thinking about that, I do want to highlight that as one of the token Millennials in not just this Committee but in Congress, as someone who grew up in agriculture, it is very concerning the fact that we do not have that next generation really primed and ready to go because it is such a high barrier to entry. So I do want to highlight the fact that I think there is opportunity for us to work on streamlining some of these projects and programs.

And with that, I will start with you, Mr. Duvall, your favorite regulation that you would like to see taken off the books and why?

Mr. DUVALL. The regulation around guestworker programs and what we had to go through to get the labor that we need to get our farms operated and stay sustainable.

Mrs. CAMMACK. Things like adverse wage effect, housing, transportation, that whole gamut?

Mr. DUVALL. And the list goes on and on and on.

Mrs. CAMMACK. It is almost like you are making the case for a new guestworker program to be housed under USDA.

Mr. DUVALL. You took the words right out of my mouth.

Mr. FRIEDMANN. The hodgepodge of truck weight regulations around the country. You cannot drive a truck across the United States without stopping and getting new permits and revising the number of axles on your truck as you move across.

Mrs. CAMMACK. Would you say 88,000 pounds would be the truck weight that would be acceptable for interstate commerce?

Mr. FRIEDMANN. Why don't we do what Canada does and has for years and Oregon and Washington and many states, 105,500 with an extra axle. The truck brakes faster and straighter under our current law.

Mrs. CAMMACK. All right. Perfect, thank you.

Mr. ROSENBUSCH. Well, NEPA seems like the easy one, but I am going to go with the Florida one and say phosphogypsum reuse.

Mrs. CAMMACK. Okay.

Mr. ROSENBUSCH. And if you don't know what phosphogypsum is, are that we have to stack it as the only country in the world. Somebody else can ask that question next.

Mrs. CAMMACK. Excellent. Thank you.

Mr. TWINING. I would say regulations around energy and the use of renewable fuels and maintaining a kind of all-the-above-energy policy.

Mrs. CAMMACK. Okay.

Mr. BROWN. I would say the GIPSA rules and contracting. I hear so much about consolidation. Our industry is—the top four is 54 percent. The other protein industries are over 80 percent. If I took half of our industry, added 15 more companies to that, we still wouldn't hit that margin. And I hear about concentration, and I think about it. And maybe the only way it will resonate with some

people is this way. You want a job in high tech, you go out to Silicon Valley. You want to be a movie star, you go to Los Angeles. You want to get the chicken business, you can do it in over 30 states in America, so please join us.

Mrs. CAMMACK. Never heard that one before, but that is smart. I like that.

Mr. LAREW. Absolutely. Well, I will stay on this theme but actually flip it around and say that the existing regulations right now in the Packers and Stockyards Act are what needed to change. They limit individual farmers' and growers' abilities to challenge deceptive practices, to challenge retaliation, and for competitive injury and harm within this consolidated market, individuals have to prove harm to the entire industry. Nobody who wants to seek remedy should have to go through that. Therefore, we need to change that.

Mrs. CAMMACK. Suffice it to say that the regulatory regime is killing agriculture as a whole and it needs to change dramatically, correct? Let the record reflect that every single one of the witnesses is shaking their head yes. I yield back.

The CHAIRMAN. All right. I thank the gentlelady. We were going to keep going here, but we will—because of the interests of Members, which I really appreciate, the folks come back and we will recess at some point. We just have two votes, but we are not going to recess yet. We will keep going. And I am pleased to recognize my friend and the gentleman from California, Mr. Carbajal, for 4 minutes.

Mr. CARBAJAL. Thank you, Mr. Chairman. My staff challenged me to walk up the stairs, this old Marine, to remind me that those were a long time ago when I served in the Marine Corps.

Since 2019, my colleagues and I have worked in a bipartisan manner to address the workforce challenges that producers throughout the nation are facing through passing the Farm Workforce Modernization Act in the House twice (H.R. 5038, 116th Congress, H.R. 1603, 117th Congress), the Senate introduced a companion bill that would have provided much relief, specifically to H-2A users dealing with adverse effect wage rate, AEWR, increases. This may have been the closest we have ever come in a long time to seeing ag labor reform done in decades.

Last night, the Department of Labor put out a final rule for AEWR. There is much discussion today about regulations that are causing harm to farmers, who are already dealing with the higher input costs, supply chain disruptions, and other issues on the topic of inflation.

Mr. Duvall, not to pick on you. But my question to you is why did the American Farm Bureau Federation not support the bipartisan effort to pass the Farm Workforce Modernization Act at the end of last year, which would have superseded the provisions of the recent AEWR rule and provided farmers with much relief on the labor front through a modernization H-2A program? I know many of the Farm Bureaus the largest ag producing state in the nation, California, supported it. The U.S. Chamber of Commerce supported it. The farmworkers UFW support it. So I was, to be quite honest with you, just quite baffled why we couldn't get over the line with the U.S. Farm Bureau supporting it as well.

Mr. DUVALL. So we have a serious problem with AEWR and the formula that they use to set that even though we were in favor of them freezing it. That was a good intention to freeze it for 1 or 2 or 3 years or whatever it was. We don't think that was enough. We think that the AEWR needs to be reformulated and make it fair to the worker and make it fair to the employer. And no one size fits all. All of the country is different, and it should be handled differently.

The second thing is private right of action. That bill put farmers at more risk and more regulation than it was before.

The third thing is it allowed for year-round workers, but it had a cap of I think it was 20,000 on it. There are 100,000 jobs needed in just dairy alone today. So we didn't have a problem with having year-round workers, but we did have a problem with the cap being there. And then we need to be assured that we have a guestworker program in place and have it successful and run multiple years before we are asked to do E-verify. And E-verify, as most people know, there are a lot of undocumented workers that work in agriculture. Those undocumented workers have probably been in a lot of these communities for 10 or 15 or 20 years. There needs to be some way to allow them to stay and continue to work in agriculture.

Mr. CARBAJAL. Thank you. I would just say that I do believe in Santa Claus and I, too, want perfect legislation out of Washington, but sometimes that is the enemy of good, and I think that was a good bill, and it was an unfortunate loss of an opportunity.

Mr. LAREW, you noted that President Biden's Executive Order and USDA actions have minimized supply chain disruptions by increasing capacity at ports. Can you expand upon how these legislative initiatives have benefited shippers of U.S.-grown agriculture commodities?

Mr. LAREW. I had stepped out for just a quick minute there. If you could, please, I realize that we are almost out of time here, but I am happy to follow up unless you want to restate the question. I am sorry.

Mr. CARBAJAL. Feel free to just send in your answer.

Mr. LAREW. Absolutely.

Mr. CARBAJAL. Mr. Chairman, with that, I yield back.

The CHAIRMAN. I appreciate the gentleman. My good friend from California, we work closely together, I tried to play the role of Santa Claus and offer an amendment that was supported by the Farm Bureau that would have made some simple—and I supported that bill knowing that it needs to be fixed for it ever to be able to go forward and offered an amendment. Unfortunately, it was done under a closed rule in the 117th Congress out of the House. And so I think we have some components that we can all work together because without workforce in agriculture, we are going to have food insecurity.

Now, I am pleased to recognize the gentlelady from Texas, Congresswoman De La Cruz, for 4 minutes.

Ms. DE LA CRUZ. Thank you, Mr. Chairman, for hosting this important hearing today. Farmers today are facing more uncertainty than ever before. Production costs are on the rise, and there are supply chain issues. Labor costs are up, and on top of all of this,

we have experienced record inflation. Look, it is clear that we need to get things back on track. In a December *Ag Economy Barometer* published by Purdue surveyed producers and listed high input costs and rising interest rates as top concerns for farmers.

Presidents Duvall and Larew, can you speak to how these issues are affecting your members?

Mr. DUVALL. Yes, a rising interest rate is making it very difficult for our farmers to borrow the capital to either improve their farms or buy new machinery, update their machinery or even get enough capital to put a crop in the ground. When interest rates goes up, it is crushing to farmers and ranchers. And as inflation hits when it affects fertilizers and fuels, that cost of production, that is the biggest cost that we have outside of labor. And it depends on what you are growing as well. Fuel, the labor is the biggest cost that you have. As inflation moves forward, all that puts our farmers in a bind, too.

And I will defer to Rob.

Mr. LAREW. Yes, no, I would echo much of what was already said, and just say that that effect and the impact, of course, is strongest on some of the smallest- to medium-size farmers and producers out there. And there are families that are really struggling with the very thin margins. But it is also—we have made reference to the young farmers and beginning farmers and so forth, and so any additional cost and impact has really a damaging effect. That cost and inflation also impacts everything, a lot of the programs at USDA in effectively diluting the impact, whether it is a cost-share program or something like that that has impacts and raising the cost of everything and creating a bigger gap between what a farmer has to contribute to for those increased costs.

Ms. DE LA CRUZ. So are you finding that your farmers are actually sowing less so that means perhaps in the future there won't be as much that they are yielding as far as crops are concerned?

Mr. LAREW. Oh, I would always say that farmers and ranchers are some of the most innovative and creative folks out there, right? And so if they can produce and I think manage to produce even more, but when you have these higher costs, I think it does have the kind of dampening effect of keeping that innovation at the same rate.

Ms. DE LA CRUZ. Excellent. Thank you. Now, not long ago, America was the largest energy producer in the world. Oil and gas—I am from Texas, so those are two important resources there—the raw materials for diesel fuel were abundant and affordable. However, through the Biden Administration, they have paused significant domestic production of oil, while limiting and disincentivizing investments in American energy, infrastructure, and refining capacity.

President Duvall, how has the Biden Administration's energy policies affected agricultural producers' access to reliable and affordable supply of diesel fuel?

Mr. DUVALL. Yes, it has tremendously affected it, and just like we were talking about, it really goes right down to the bottom line of our farmers when they had to pay more for it. When we were energy-independent—and I am proud to say that agriculture played a major role and played their part in ethanol and biodiesel produc-

tion off our farms. Our country was stronger, our farmers were stronger, and we had a better chance to be sustainable.

Ms. DE LA CRUZ. Thank you. I yield back.

The CHAIRMAN. I thank the gentlelady. Votes were called about 6 minutes ago, and so we are going to hear from one more Member, and then we are going to recess for anyone—I encourage folks to come back. But we are going to hear from one more Member, so I am pleased to recognize the gentlelady from Washington, Congresswoman Gluesenkamp Perez.

Ms. PEREZ. Thank you, Mr. Chairman. And thank you to all of our witnesses for being here today.

President Larew, as you may know, I am a big advocate of right-to-repair legislation, and that is not just because I fix cars for a living. I know that this is not just about cars and tractors. It is actually about our DNA as Americans. We believe in fixing things. DIY is part of our DNA. And so I was very pleased to see your testimony, the National Farmers Union supporting right to repair. I would just like you to elaborate and explain in the real-world terms how this trend of us not owning the things we rely on, not having the right to fix our own stuff is affecting farmers and our food security.

Mr. LAREW. Yes, I appreciate you raising that. And quite frankly, I appreciate your leadership on this issue. And, as you well know, as an auto mechanic yourself and farmers like that independence. They like to innovate. They like to be able to repair their own equipment. And so as manufacturers have increased the capabilities of the machinery that comes with a lot of complexity in equipment, so forth, but along with that has come really big restrictions on farmers' ability to either fix it, seek independent repairs, or to access even the diagnostic equipment in some cases. And what we have come up with is a patchwork, unfortunately, of approaches and MOUs and promises in the past that have never actually led to any concrete resolution to this issue so that farmers can handle their own equipment.

The real-world impact that this has is delays and theme of this hearing is added cost. This is about creating additional burdens and ultimately affecting the bottom line for farmers out there all across the country, either through delays, either through because of that control of the repair and the parts, added cost that is built into really also in a monopolized equipment manufacturers' world.

We hope that there will be a solution out there. We know that the states are addressing this issue. And we have seen parallels with the auto industry where promises by the industry have not led to the solution, but efforts to put that right to repair into law has that added effect of making that accessible to everyone.

Ms. PEREZ. Yes. Would you say that these policies are increasing cost to the consumer for our—

Mr. LAREW. Of course. Any time that there is added costs raised into this, that has to be passed along somewhere.

Ms. PEREZ. And what about the impacts on labor and in the growth of independent kids thinking about entering the trades or the accessibility of owning tools to open up your engine?

Mr. LAREW. Well, I think that there are two issues there. One of these is this question around independent repair, right, in the

fact that one of the other themes from this is the impact that added costs and restrictions on farmers and ranchers is that that has a ripple effect through our rural communities. And part of that effect is that small businesses that may be able to offer repair or to provide some services are currently limited in their ability to do that.

Ms. PEREZ. Thank you so much. Another issue that is critical to my state is that of trade. Washington State's agricultural economy is highly dependent on trade. We are one of the largest exporting states. According to the USDA, Washington ships \$4 billion in domestic ag abroad annually. So fruit tree growers in Washington State have lost more than \$800 million exports to India and China because of these countries' retaliatory tariffs. And that puts our growers at a disadvantage when competing against growers that enjoy preferential treatment.

With that, I will yield back my time. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentlelady.

The Committee will stand in recess subject to the call the chair, which will hopefully be within 15 to 20 minutes.

[Recess.]

The CHAIRMAN. Well, I appreciate everybody's patience as we do continue here. And I am pleased to recognize the gentleman, a neighbor of mine actually, from New York, Congressman Langworthy for 4 minutes.

Mr. LANGWORTHY. Well, thank you very much, Mr. Chairman. And as many of my colleagues have already mentioned, one of the key drivers of skyrocketing prices facing our farmers and our ranchers, including a lot of the small family farmers in my district in western New York and the southern tier of New York along the Pennsylvania line, is energy. And my district sits on top of the Marcellus Shale, and it is considered one of our nation's largest natural gas resources. Yet, Democratic leaders in New York State and here in Washington have made it their mission to forever lock away this game-changing source of American energy. As a result of these policies, producers are struggling to survive, struggling to afford the fuel they need to run their trucks and their equipment. The energy crisis facing our farmers is leading towards a food crisis. And if we want to get serious about ensuring the future of American food security, we need to get serious about unleashing the power of American energy.

And with that, President Duvall, as you know, this Administration has struggled with implementing an effective energy strategy. And I agree with others on the panel that Congress and the Biden Administration should avoid any policy that seeks to halt or hold back increased domestic energy production. And regarding inflation, energy costs couldn't be any higher. For example, the average price of diesel per gallon in 2020 was \$2.58 a gallon, and since that, it has increased to around \$5 a gallon.

President Duvall, how are your members adapting to and managing high energy costs in their agricultural operations?

Mr. DUVALL. Well, we previously referenced it a little bit. I think a lot of our farmers and ranchers are putting a pencil to the crop that they are planning on planting, and it could change what crop they plant or it could even make their mind up not to plant it at

all if the cost of production is going to be more than what they are going to reap out of it. So I think it is just one of the things that is in a formula that they go through to decide what and whether they are going to plant it.

Mr. LANGWORTHY. Great. And, Mr. Twining, in your testimony, you mentioned a study that your association conducted regarding potential scenarios of transitioning to electric light duty vehicles through 2050. I come from a state that is looking to enforce a transition to all electric vehicles and move away from natural gas and other affordable fossil fuels by 2050. Speaking with farmers back home last week, as we were on district work period, this is something that weighs very heavily on all of our producers. They have great uncertainty on how they are going to comply with these goals that have been arbitrarily set by our state government that may not be achievable at all, while at the same time, we have an Administration that is crippling our energy sector with policies here in Washington. So what are some of the challenges from moving an agricultural operation to all electric by 2050 and moving away from natural gas and fossil fuels as a whole? Is this a timeline that you see as even remotely possible?

Mr. TWINING. Well, I definitely encourage you to refer back to the written testimony for the details, but I can tell you practically on a daily basis the type of equipment that most farmers and ag retailers like ourselves operate cannot be successfully operated currently with existing electric technology. And, more importantly, there is far better bridge fuels and renewables that lower our carbon footprint and enable us to continue to do business as normal with existing equipment, which lowers our cost. So to leap to electric is premature in my opinion and overlooks an important intermediate step we could take that does bring climate benefits with it.

Mr. LANGWORTHY. Thank you very much. And one separate question for President Duvall on a different topic. I know that you have been engaged on the right-to-repair issue, and just quickly, I was wondering your memberships' thoughts on that.

Mr. DUVALL. Yes, well, we would love to have a solution within the industry, and that is why we work real hard with John Deere, and we have a Memorandum of Understanding that allows us to work on our equipment, take it to our local dealer. They will give us access to the tools. But it is just a Memorandum of Understanding. And hopefully, we are working real hard to do that with other manufacturers. But if that doesn't work, then we are going to be looking to you all to help us solve that problem. And we will be revisiting it to be able to monitor it and see whether it is working.

Mr. LANGWORTHY. Thank you, Mr. Chairman. I yield back. Thank you, witnesses.

The CHAIRMAN. I thank the gentleman. Now, I am pleased to recognize the gentleman from Florida, Mr. Soto, for 4 minutes.

Mr. SOTO. Thank you, Mr. Chairman. And thank you all for I am sure what has been a long day on the Hill. But we have a lot of work to do, gentlemen. This Committee is charged with an incredible opportunity and responsibility. It is a farm bill term. I know you all know this crystal clear. When I look at what we are respon-

sible for, I think about in central Florida where I represent so many ranchers and citrus growers, farmers of fruits and vegetables who are counting on us, and also many folks, whether in our urban or rural areas, who are availing themselves of SNAP as well and in some of our suburbs. And so as we all work together, we have a responsibility to make sure that we keep this critical coalition together.

Just speaking to some of my constituents at home briefly, so many of our ranchers are going to need to continue to have the vaccine bank to help out with livestock. Specialty crop investments for citrus greening are going to be important, preserving seasonality for our fruits and vegetables, growers who are providing so many nutritious fruits and vegetables during the wintertime, and then so many areas around the district, whether it is rural, whether it is urban, and even some of our suburban areas that desperately need to make sure to have SNAP so no child in central Florida goes hungry.

And boy, did we have a roller coaster during the 115th Congress. We had a great bill pass out of the Committee, and then it failed once or twice on the floor. And then it took us until the end of the 115th to finally get it done. And, of course, we worked with our Senators as well and finally got a product that we got through, thank goodness, and thanks to a lot of work by everybody in the 115th Congress.

President Duvall, how key is this partnership between our farmers, ranchers, and growers, along with SNAP and other food assistance, to ensuring we pass a farm bill? How key is this partnership?

Mr. DUVALL. Well, of course, you brave men and women that serve us in these capacities have to answer to your constituents, and a lot of the people that serve in your positions don't come from agricultural areas, so they don't have an understanding, don't have a need to understand, and it is important that we understand how important the safety net is for agriculture so that we will have the food to be able to use in the safety net for the people that are not as fortunate as others during that period of their lives.

So I think they go together well. It gives us a true picture of the food, where it is produced and where a lot of it is consumed, and making sure that those people have access to good quality food.

Mr. SOTO. And I am glad you mentioned that, President Duvall. Not only is it a coalition that pass the farm bill, but so many of Florida's farmers, ranchers, and growers are helping supply the food for the SNAP program. How important is it that we continue that partnership to put our local agriculture to work for the SNAP program? And how important is it for outreach for Members of this Committee to make sure our whole coalition understands this partnership?

Mr. DUVALL. Well, it is important to all agriculture, but it is really important to the small-, medium-sized farmers looking for a local market. They may supply the local school with those fruits and vegetables or whatever it might be. And I just think that—and that is the partnership everybody desires to have. We live in an era where everybody wants to know the farmer, and they want to know how they produce his food, and what better way to do that and do it local. Of course, we can't feed everybody in America and every-

body around the world that way, but it is a market that flourished during the COVID pandemic.

Mr. SOTO. Well, thank you so much and yield back.

The CHAIRMAN. I thank the gentleman. I now recognize the gentlelady from Illinois, Congresswoman Miller, for 4 minutes.

Mrs. MILLER of Illinois. Thank you. President Duvall, in your testimony you mentioned that receipts for major row crops such as corn and soybeans are expected to fall. How do you think new trade agreements could improve the situation?

Mr. DUVALL. Anytime the field in the arena of trade is leveled and we have access to those markets, it helps our farmers and ranchers tremendously. So we are all the time working to encourage trade across the country and across the world, and we just think there are some great opportunities out there, especially in the Asia Pacific areas and hoping that we will get around to doing that because we feel like this Administration just hasn't moved fast enough in that area.

Mrs. MILLER of Illinois. I was going to ask you if you thought that this Administration was passive or aggressive, so thank you for sharing that.

And Mr. Rosenbusch, in your testimony, you note that natural gas accounts for between 70 to 90 percent of ammonia production costs and that natural gas prices doubled in 2022. You also note that we need energy policies that support an abundant, safe, and affordable supply of natural gas. Do you think the Biden Administration has taken necessary steps in supporting domestic production of natural gas?

Mr. ROSENBUSCH. So we obviously support anything that will allow for natural gas capacity to increase. And I think that you can turn to my colleagues at the energy association such as API, *et cetera*, to give you a roadmap of what exactly those energy producers do. But fossil fuels are a critical part of food and agriculture, and so we do need to be more aggressive at allowing our gas producers to expand production.

Mrs. MILLER of Illinois. Would you share some policies that you would like to see prioritized by Congress in order to promote natural gas production?

Mr. ROSENBUSCH. Well, like I said, I would probably turn to my colleagues that are representing the natural gas producers. They are going to be the experts on that. But I could generally just say that some of the similar things we have talked about today around permitting, expansion of opportunities to expand natural gas production, but I think it is also signaling. And, we were talking about electric vehicles and phasing out of gasoline vehicles, and I think those kinds of messages also sound strong, and we need to just make sure we have strong energy policies for agriculture.

Mrs. MILLER of Illinois. I agree absolutely. My husband and I are producers, and we are very concerned about this.

Under the Biden Administration, we have seen record inflation, rising input costs, and a decrease in American energy production. My fellow farmers are concerned that the Biden supply chain crisis, inflation crisis, and energy crisis threaten the very existence of the family farm. Farm income is decreasing while consumer prices hit record highs. China is taking advantage of us, and we must un-

leash American energy, including biofuels, to fight back. I appreciate our witnesses coming today to advocate on behalf of production agriculture. Thank you so much.

Thank you, Mr. Chairman, and I yield back.

The CHAIRMAN. I thank the gentlelady and now recognize the gentleman from New York, Mr. Molinaro, for 4 minutes.

Mr. MOLINARO. Thank you, Mr. Chairman. I appreciate it. I thank all of you for spending the day with us. It speaks obviously not only to the important work of the Committee, but obviously how important we feel agriculture remains not only to food security, but national security. So we appreciate you being here.

I want to localize one of my questions, and then I just have one other, Mr. Chairman. So I represent a part of the State of New York where family farms remain the largest industry, but also where we continue to feel the pressure of out-migration from metropolitan areas, putting a lot of pressure for subdivisions and higher cost of land. I also, of course, serve and represent New York State, which I think California might give us a run for our money, but still perhaps is among the most over-regulated states in America.

Most recently, as you likely know, New York began its transition to a 40 hour overtime threshold for agricultural workers, despite pleas from area farms and farmers across New York already struggling under inflation, high cost of doing business. I know this is a state issue but obviously has major impact on farming and agriculture. So Members across the New York State delegation have put forward legislation to try to claw back that imposition of that overtime threshold, and we are hopeful we can take some corrective action.

Mr. Duvall, I just—although I did want to call you Zippy just because it felt good and it is fair enough. Mr. Duvall, could you just speak maybe broadly, but if you would like to speak specifically to the New York experiment about access to the workforce, what lowering the threshold will do to family farms and potentially hurt farms in New York State and maybe to the benefit of other states if you have an observation in that regard?

Mr. DUVALL. Sure. Well, when you start talking about overtime with farmworkers, it is a different conversation than it would in most production of anything else because we are driven by the weather and elements outside, and 1 week we may be full speed ahead doing the work, we may be in harvest, we have to get a harvester planted and you got to go long hours to get it done. And then the next week, it may be raining and you might not be doing anything. And overtime just really doesn't fit in the scheme we do things. And, two, a farmer is a businessman, and if you force him to pay overtime, a lot of farmers probably would say, okay, you made your 40 hours, I am going to hire somebody else to come in and work the other part of the overtime. So a lot of the workers don't like that. They want to work. They don't mind working overtime—

Mr. MOLINARO. So emphasize that for me one more time. So the State of New York imposes the overtime standard. Workers don't like it. In fact, I have talked to many farmworkers who say, listen,

I came here to make money, not go on vacation. What does that mean for New York farms?

Mr. DUVALL. Yes, it means that they are—there is already a shortage of help, so finding somebody else that would work in another 40 hour slot would be difficult. But when crops need to be harvested, they have to be harvested. We can't wait or they will spoil in the field. And so much of what we do is on a timely basis and has to be done. So it would put farmers under a hardship, and it would put their employees under a hardship.

Mr. MOLINARO. So as much as I would like to speak, Mr. Chairman, about the high cost of land in states like New York, we will revisit that, but a broader consideration for land trusts in the context of purchase or transfer development rights as a means of protecting family farms in a state like New York, we have to patch together small farms in order to make large farming work, and using tools more creatively is of benefit to us. I won't belabor that.

Mr. Brown, I would just like you to know that the 19th Congressional District in the State of New York is the birthplace of the chicken nugget, which I am told is still chicken.

Mr. BROWN. Well, sir, as somebody from Sing Sing, New York, the town, not the prison, and having gone to school upstate in Rochester, I am well acquainted with New York, and I am a New York Giants fan.

Mr. MOLINARO. As am I. Mr. Chairman, with that, I yield back.

Mr. ROUZER [presiding.] Mr. Moore is recognized for 5 minutes—or 4 minutes. Pardon me.

Mr. MOORE. Thank you, Mr. Chairman. And I am not a New York Giants fan, but other than that, I am an SEC football fan.

So first, let me say thanks to the witnesses for all being here. Guys, we got committee hearings going, so we are all over the place. Zippy, good to see you.

First question, Zippy, you mentioned something earlier today, and I was trying to track on Scope 1, Scope 2, and Scope 3. Somebody was talking about that, and it is just frustrating to me and this Committee. I am reminded of what Ronald Reagan said. He said the government's idea on the economy is when it is moving, you tax it; if it keeps moving, you regulate it; and when it fails, you subsidize it. So today, it seems like a lot of regulations have been the issues that we are addressing. So as we talk about consolidation, I think a lot of times government, we have our thumb on the scale and we cause a lot of problems. But can you elaborate a little more on this consolidation because of maybe the ESG, the things that are being pushed on farmers now that is fairly new to some of us here?

Mr. DUVALL. So the pressures on the farmers is every time when you put those regulations and start enforcing them, our farmers have to spend money and time or hire lawyers or have to hire consultants to help them get it done. And the margin that we work on is so thin, we can't afford to do that if we even had the time to do it. None of us have the—most of us don't have the expertise to get it done on our farms.

Mr. MOORE. So the middle and smaller farmers, it really challenges them. Every time the government says, "Hey, you got to re-

spond to this regulation, you got to fill out this paperwork,” it puts you guys in tough spot.

Mr. DUVALL. It puts them in a tough spot. Movement toward demanding that we do certain things around climate puts farmers in a position where they got to have different equipment to do it with and different ways of doing that farming, and they can't afford to do that, And it just puts them in a very difficult—the American people love the farmer, but they are associated with the small-, medium-sized farm. And of course, 98 percent of us are family-owned. They are not big, corporate farms everywhere. But we are doing everything in our power regulatorily to force that small-, medium-sized farm out of business, and that is opposite what the American people want.

Mr. MOORE. Zippy, my cousin just came back to our family farm that we hadn't been farming, haven't been row cropping since 1980. And he was getting started, and he told me his input cost. He budgeted for I think he said \$3.30 a gallon for diesel fuel for this production season. And obviously, energy policies domestically, they just blew his budget up between that and fertilizer cost. And so it is something, like I said, I think a lot of times our policies here cause bigger problems.

And real quick, Mr. Brown, I am a poultry science guy from Auburn from back in the day, and I think we used to hit about 90 birds a minute, and I think that was kind of the target. And so tell me now, the USDA and how they are—you told me other countries are beating us basically in production of birds per minute now and line speeds. And so tell me, what are we facing and what is the holdup on getting the job done?

Mr. BROWN. Yes, sir. The line speeds typically for the chicken industry historically has been 140 birds per minute. Back in the 1990s when President Clinton was in office, USDA came up with a program called HIMP. It was going to be a trial program to see if companies that qualified could operate at 175 birds per minute. So that has been ongoing now since about 1998.

Then we had some groups come and sue USDA and the industry about having this line speed program. We went to court. We actually joined USDA. USDA was supposed to come out of there and do a study on whether this was safe or not. As I mentioned earlier, having been in place for well over 20 years now, almost 25 years, we have all the statistics that the food safety profile is equivalent to equal at the higher end and also that the worker safety profile is equivalent. What is going on is we have the 175 waiver. We could lose it to go back to 140 when other nations, Canada, Germany, *et cetera*, are at 220.

Mr. MOORE. Thank you, Mr. Brown. I will yield back. Sorry, Mr. Chairman.

Mr. ROUZER. No problem. The gentleman's time has expired.

I now recognize myself for 4 minutes. So Mr. Brown, if you want to continue on there just a little bit, I will give you a little leeway.

Mr. BROWN. Sure. And I am sorry I missed the click, Mr. Chairman, Mr. Rouzer.

With regards to the GIPSA rules that are in our testimony that we are upset with is, basically, Congress never authorized these GIPSA rules. I think, Mr. Rouzer, as you know. In fact, in about

2010 during the first term of the Obama Administration, a trial lawyer out of Mississippi who made a living suing chicken companies was given a job as an Administrator at USDA. He crafted those original proposals. Congress forbade the Administration from going forward on those rules. When it had a change of Administration, they were not pursued by the Trump Administration nor Secretary Perdue. We have now had another change of Administration, and they have come back.

We hope that they never are enacted. We are going to work with Congress, hopefully, to prevent them from being enacted. And if there is one son of a gun after 13 years that is sitting back just licking his lips waiting for these rules, it is the guy that wrote them, the trial lawyer in Mississippi, Dudley Butler. Let's deny him that joy.

Mr. ROUZER. Mr. Rosenbusch, several of us were in a T&I mark-up earlier this morning, and we repealed through a CRA—it got out of committee anyway—a repeal of the WOTUS rule, and then also passed legislation that I had recently introduced, H.R. 1152, the Water Quality Certification and Energy Project Improvement Act of 2023, which addresses the weaponization of the Clean Water Act, specifically section 401. How big a problem—and you have touched on this a little bit before—but how big a problem is permitting in this country? And if we get our permitting right with clarity, transparency, easily enforceable and conforming to the law, how much would that improve our ability to source back in this country?

Mr. ROSENBUSCH. Yes, it would be a huge impact. And I will start with WOTUS to your comment. I mean, farmers—and to build off what Zippy has said, they have been committed to conservation for a long time. And when you think about water and nutrient use and using the 4R's of using fertilizer at the right source, rate, time, and place, tremendous improvements. As a matter of fact, 34.7 percent was one example of nutrient use efficiency that a farmer in Illinois experienced after using some of these practices.

So we really need to be practical with these regulations both on the farm because we know farmers are doing the right thing voluntarily, and then from a production standpoint, the permitting is key to fertilizer companies being able to deploy their capital and assets quickly and efficiently. And, they have projects, they are ready to go. We have invested a lot in the energy transition, and we are talking about how important natural gas is, but low-carbon ammonia is going to be a hot investment into the future. And these kind of innovations are going to need streamlined permitting that will allow them to meet those innovation goals.

Mr. ROUZER. Mr. Duvall, real quickly, you touched on trade a little bit. Have there been any conversations with the Administration about a trade deal with the UK that you have been involved in?

Mr. DUVALL. I have not. I did have conversations with the UK last week. We talked about many things, but we also talked about trade. Also, we have talked to the Administration a lot about enforcing the rules of USMCA when it comes to corn going to Mexico and dairy in Canada.

Mr. ROUZER. Thank you. My time has expired. I now recognize Mr. Duarte for 4 minutes.

Mr. DUARTE. Thank you, Mr. Chairman, I appreciate it.

I think abundance and affordability are inextricably linked, and yet we have regulation after regulation, land use limitation after land use limitation, energy constraints here in the country that are entirely resolvable. So, Mr. Brown, you listed in your testimony that every American eats about 100 pounds of chicken on average each year, so it is a real round number. We can work from there. Let's start and just tell a little bit of the other side of the story, at least one other side of the story on corn ethanol, the price of feedstock for chickens, biofuels in general, and what are some of the biofuels policies doing to the price of chicken?

Mr. BROWN. Well, sir, if you go back to when the ethanol mandate was put in, I believe it was 2007 or 2008, that drove the price of feed, the price of corn through the roof. It knocked 13 poultry companies out of business. Oddly enough, you have people that advocate for ethanol but they complain about consolidation. But we will set that aside. So it drove the feed cost up. Now, over that time, our industry has taken narrower margins, and we have learned to live with it because, again, we are not going to refight that war. I don't think Congress would have the appetite for that. But it drives up costs. You drive up costs, that is less money for others within the industry and its cost, if you are a grower, potentially less money, you are growing less birds. And if you are a consumer, you are paying at the meat counter.

Mr. DUARTE. Thank you. And on top of that, a chicken in every pot used to be a political kind of a proverb that was pitched upon by several politicians. We have a government that knows all about line speeds of chicken processing. We have a government that wants to pretend they know more than they do about chicken contracting and how chicken producers get to contract, make their own business decisions with companies you represent. I will leave that alone, but I think it is self-evident that those are not putting chickens in every pot.

Mr. Zippy Duvall, how are you doing?

Mr. DUVALL. I am good.

Mr. DUARTE. Long time since I have seen you in Tehama County on my property where we had a little WOTUS runaround.

Mr. DUVALL. That is right.

Mr. DUARTE. I was out there with Paul Winger years and years ago.

Mr. DUVALL. Thank you for allowing me to do that.

Mr. DUARTE. Back during the Obama era WOTUS rule, the Farm Bureau did a really good job of mapping and predicting what percent of American productive farmland would be impacted by the WOTUS rule. Have you done that again for the Biden WOTUS rule?

Mr. DUVALL. We have done it in particular states. I can't tell you which ones they are. But if it continues to move forward, we are going to be doing more of that. We are really focused on what the second ruling is going to say.

Mr. DUARTE. Yes. And this WOTUS rule actually has led to the criminal prosecution of farmers for farming their own land.

Mr. DUVALL. Yes, sir.

Mr. DUARTE. In production systems that have been farmed there before.

Mr. DUVALL. Yes, sir.

Mr. DUARTE. And so the vagueness of the WOTUS rule is a problem.

From The Fertilizer Institute, Mr. Rosenbusch, we heard a few weeks ago in a State of the Union address that the President conceded that we would need fossil fuels for the next 10 years. What is the fertilizer industry's plan to supplant fossil fuels as feedstocks to meet the nation's agricultural needs for nitrogen fertilizers after that 10 years is up? I am sure you have a plan.

Mr. ROSENBUSCH. Well, great question, Congressman Duarte, and I think we will continue to need fossil fuels to support fertilizer supply. This is not a switch that you turn on and off. However, I will say that billions of dollars are being invested right now by manufacturers into low-carbon ammonia production, so essentially, the ability to produce nitrogen fertilizers without natural gas. And whether it is electrolyzers or renewable fuels that will allow that chemical process that we call Haber-Bosch to occur is something that is going to be invested in into the future. But that is not going to happen today and tomorrow, and a lot of that may end up going into hydrogen fuel for a source of fuel as well. So we will continue to need natural gas and strong energy policy for fertilizer production.

Mr. DUARTE. Thank you. I yield back to the Chairman.

The CHAIRMAN [presiding.] Well, thank you. I think that is all of our Members. Well, we very much appreciated everybody's patience and your endurance. And, it's quite frankly, rural America, the agriculture industry, and meeting the needs of every American family is well worth our endurance.

So today's hearing, just very pleased. We had 52 Members that participated in today's hearing. I don't know if that is a record, but I think it probably is for the Agriculture Committee because we have had so much interest. We have had to expand our Committee membership here, which I think speaks to the importance of this industry, to the American families, and quite frankly, to a lot of families around the world when you think about our exports and our humanitarian aid that we provide through food.

Today's hearing has really shined a spotlight on many issues confronting producers and the entire agriculture sector from the farm to the consumer, whether it is market volatility, weather risks, or a wrongheaded government policy, much of which have been exacerbated by the Biden Administration. The House Committee on Agriculture has a responsibility to examine these challenges and develop responsible approaches to addressing them in the upcoming farm bill.

Over the course of the next several months, the Committee will be holding numerous hearings, and we will be continuing our farm bill listening sessions at various locations across the country. I would like to challenge my fellow Committee Members to be present and heavily engaged in this process. Getting the farm bill done right and on time will require a lot of work and attention from all of us, but we owe it to all our constituents from producers to processors and, ultimately, to consumers to get that policy right.

So I want to thank the witnesses here today for their excellent testimony and responses to the Members' questions. I do look forward to future hearings and as well as the next two listening sessions, one in Fort Worth on Thursday and one in a couple of weeks in Waco, Texas, and then with a lot more to be scheduled after that.

And so under the Rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional material and supplementary written responses from the witnesses to any question posed by a Member. This hearing of the Committee on Agriculture is adjourned.

[Whereupon, at 2:45 p.m., the Committee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUBMITTED STATEMENTS BY HON. GLENN THOMPSON, A REPRESENTATIVE IN
CONGRESS FROM PENNSYLVANIA

STATEMENT 1

ON BEHALF OF BILL BROYDRICK, EXECUTIVE DIRECTOR, NATIONAL RURAL LENDERS
ROUNDTABLE

Thank you for the opportunity to submit testimony for the February 28th House Agriculture Committee Hearing on *Uncertainty, Inflation, Regulations: Challenges for American Agriculture*.

The Committee, in preparation for the farm bill, is considering the current regulatory system at USDA. USDA operates several programs that utilize guaranteed lending to promote prosperity in Rural America.

The National Rural Lenders Roundtable is a Trade Association of stakeholders in the rural lending sphere (See www.NRLRL.com). The goal of everyone concerned is to deploy capital to economically viable projects in Rural America. Our motto is that it is better to lend than to spend.

USDA has undertaken a complex regulatory regime which constantly and needlessly delays deployment of capital to Rural America, unlike the Small Business Administration which operates similar programs. SBA has determined that its guaranteed lending programs are granted a Categorical Exclusion from the National Environment Protection Act (NEPA) because these guaranteed loans are not a major Federal action. On the other hand, USDA requires applicants through a series of time consuming and expensive reports to prove that they are not a major Federal action.

USDA loans can not be closed unless and until all of the environmental requirements are met. The result are delays that hurt the borrower and rob the community of needed capital. For example, several hotel projects in California continue to be delayed because USDA has not reviewed environmental reports.

We urge the Committee to consider adopting a presumptive categorical exclusion that can be overridden by the [Under Secretary] for Rural Development if she believes that a project is a major Federal action as part of the farm bill.

We look forward to working with the Committee.

STATEMENT 2

ON BEHALF OF J.R. SIMPLOT COMPANY

Overview

The food supply chain, in particular key inputs to agriculture (such as nutrients), have shifted recently due to increased energy prices, the conflict in Ukraine and other interruptions in global trade. The result has been increases in prices throughout the entire food supply chain: costs for production of nutrients and growing food have increased and have contributed to record food prices. In the U.S., food prices have reached highs not seen in decades, while globally food prices are 25 percent higher than pre-pandemic costs.¹* The CPI (Consumer Price Index) for all food increased 0.7 percent from December 2022 to January 2023, and food prices were 10.1 percent higher than in January 2022.² The reasons for these cost and price increases are complex. As to nutrients, prices are affected by a variety of factors including global trade trends including unfair trade, energy prices,³ and supply and demand conditions.

The J.R. Simplot Company (Simplot) has manufactured nutrients for American agriculture for over 75 years, with a focus on making phosphate fertilizers. Phosphate is a major component of nutrients needed to grow food in America. Being able to supply the food needs of the United States (*i.e.*, food security) is a national and

¹MacDonald, Alistair “Globalized Supply Chain Brings More Turbulent Food Prices” † *Wall Street Journal* November 28, 2022, <https://www.wsj.com/articles/globalized-supply-chain-brings-more-turbulent-food-prices-11669557602>.

* **Editor’s note:** footnotes annotated † with are retained in Committee file.

²“Summary Findings Food Price Outlook, 2023”, † Economic Research Service U.S. Department of Agriculture, February 23, 2023 <https://www.ers.usda.gov/data-products/food-price-outlook/summary-findings/>.

³Energy prices affect agriculture and the production of fertilizers in a multitude of ways. Natural gas is a major feedstock to make ammonia; as the price for natural gas increases so does the cost of making nitrogen fertilizers. For phosphate, sulfur is needed to make phosphoric acid, which is the building block for phosphate fertilizers. Sulfur is acquired from oil and natural gas production. Declines in domestic production of these fuels results in tightening supply for sulfur and increased prices.

economic security issue. The ability to produce domestic phosphate for fertilizer needed to grow food in America is threatened by foreign imports and by a very burdensome, time and cost consuming regulatory process to obtain approvals for new mines. Fertilizers, including phosphate products are essential to maximizing crop yields and an essential input for farmers across America. As global supply chain issues persist, it is even more vital we as a country are able to access crop nutrition inputs like phosphate that are present in the United States.

Over the past few years increasing domestic production of fertilizer has been a bipartisan issue and should remain a bipartisan objective at the top of minds for policymakers. Below are quotes from House Agriculture Committee Leaders and U.S. Department of Agriculture Secretary Tom Vilsack voicing support for increased domestic production of crop nutrition products.

In a September 27, 2022 Press Release, then Chairman of the House Agriculture Committee and now Ranking Member David Scott said:

“The importance of American-made fertilizer production has never been clearer than it is now. The war in Ukraine and other challenges to our agricultural supply chain have been a hardship for our farmers and impacted access to critical production tools that will carry over into the next harvest season.”⁴

Current House Agriculture Committee Chairman GT Thompson noted the importance of domestic production of phosphates in a June 2022 factsheet saying:

“Streamlining leasing and permitting processes to expedite exploration, production, processing, reprocessing, recycling, and domestic refining of potash and phosphate is a critically important way to reduce our nation’s vulnerability to supply chain disruptions and lower input costs. The majority of the phosphate reserves in the world are found overseas; in particular, Morocco and the Western Sahara have over 70% of the world’s reserves. To maintain a viable phosphate fertilizer industry in the United States requires reliable and predictive processes to access phosphate ore. A significant portion of the phosphate present in the United States is found on Federal lands in the western U.S. Though getting Federal and state approvals to mine such ore is increasingly unpredictable due to permitting process delays and litigation. The NEPA environmental studies, permitting processes, and subsequent litigation often result in permitting expenses exceeding \$10 million.”⁵

Finally, in a March 11, 2022 press release, USDA Secretary Tom Vilsack announced his support for increased domestic production of fertilizer which included:

“Recent supply chain disruptions from the global pandemic to Putin’s unprovoked war against Ukraine have shown just how important it is to invest in this crucial link in the agricultural supply chain here at home,” said Agriculture Secretary Tom Vilsack, “The planned investment is one example of many Biden-Harris Administration initiatives to bring production and jobs back to the United States, promote competition, and support American goods and services. As the President said [at the State of the Union], we are working to rebuild the economy towards resilience, security, and sustainability, and this support to provide domestic, sustainable and independent choices for fertilizer supplies is part of that effort. In addition to the jobs, lower costs and more reliable supply, increased investment in the domestic fertilizer industry will help address climate change by reducing the greenhouse gas emissions associated with transportation, while also fostering more sustainable production methods and more precise application.”

Fertilizer prices have more than doubled since last year due to many factors including Putin’s price hike, a limited supply of the relevant minerals and high energy costs, high global demand and agricultural commodity prices, reliance on fertilizer imports, and lack of competition in the fertilizer industry.

The United States is a major importer and dependent on foreign fertilizer and is the second or third top importer for each of the three major components of fertilizer. The top producers of the major components of fertilizer include China, Russia, Canada and Morocco, with Belarus also providing a significant share of potash.⁶

⁴ Chairman David Scott Applauds USDA’s American-Made Fertilizer Production Grants | House Agriculture Committee † (<https://democrats-agriculture.house.gov/news/documentsingle.aspx?DocumentID=2664>).

⁵ https://agriculture.house.gov/uploadedfiles/overview_and_bill_summary_the_reduce_farm_input_costs_and_barriers_to_domestic_production_act.pdf.†

⁶ <https://www.usda.gov/media/press-releases/2022/03/11/usda-announces-plans-250-million-investment-support-innovative>.†

As a domestic producer of phosphate fertilizer, the J.R. Simplot Company applauds the remarks and efforts of Congressmen Scott and Thompson and Secretary Vilsack, and would encourage bipartisan support to find solutions that make increased domestic production more achievable and to ensure the reliable supply of crop nutrition products to American farmers. Included in this submission are suggestions for reforms that could positively impact domestic producers providing crop nutrition products to American farmers who work every day to feed our country and the world.

Background

Simplot has a more than 90 year history as a family-owned, privately held global food and agriculture company headquartered in Boise, Idaho. Its portfolio includes phosphate mining, fertilizer manufacturing, food processing, farming, ranching and cattle production, and other enterprises related to agriculture. The company has large mining and manufacturing operations with three mines in Utah, Idaho, and Nevada and four manufacturing facilities in Idaho, Wyoming, and California distributing fertilizer products and material throughout the U.S., Canada, and Mexico. Simplot owns 16 ranches in Idaho, Nevada, Oregon, and Utah and 40 working farms across Idaho and Washington. Simplot is one of the world's largest frozen potato processors, with annual production of more than 3 billion pounds of french fries and related products.

Simplot's "mine to plate" vertical integration strategy gives us a unique understanding of the food supply chain, including specific segments such as the fertilizer supply chain. Thus, in this testimony, Simplot provides insight from an integrated producer's perspective into food supply dynamics with an emphasis on the challenges of producing phosphate nutrients for American agriculture.

Phosphate is a Critical Mineral Essential for Food Security

Phosphate is critical to the production of our nation's major crops, such as wheat, corn, soybeans, and cotton. Phosphate is the base mineral for phosphate fertilizer, an irreplaceable nutrient for these crops. The importance of phosphate to national security has been recognized for well over a century. President Taft, in a special message to Congress on natural resources, stated the following:⁷

"The extent of the value of phosphate is hardly realized, and with the need that there will be for it as the years roll on and the necessity for fertilizing the land shall become more acute, this will be a product which will probably attract the greed of monopolists."

President Taft's message on phosphate was prescient: he recognized that having fertilizers to grow food was a national security issue and also that foreign interests posed a threat to this security. President Taft was concerned about the acquisition of phosphate by foreign interests.⁸ In those days, the eastern U.S. phosphate deposits were owned or controlled by European companies. Most, if not of all this ore was being exported for the use of European farmers. It was widely recognized that domestic sources of phosphate for domestic fertilizer manufacture and use was vital to the development of this country, and that we should not be dependent on European suppliers.

Besides the eastern phosphate deposits, the other main source of phosphates in the United States is the Western Phosphate Field. The Western Phosphate Field covers over 350,000² km in Idaho, Montana, Utah and Wyoming and is one the largest resources of phosphate rock in the world.⁹ The importance of this source of phosphates was recognized by Presidents Roosevelt, Taft and Wilson. On December 9, 1908, the Secretary of the Interior issued a Secretarial Order that created a "temporary" phosphate reserve of 18,400² km in Idaho, Utah and Wyoming. Three additional Secretarial withdrawal actions in 1908 and 1909 added approximately 18,600 km² to the phosphate reserve.

In response to President Taft's 1910 Special Message, the Pickett Act was passed on June 25, 1910. The Pickett Act provided the Secretary of Interior the ability to withdraw certain Federal lands from exploration and occupation. Under the Pickett Act, Presidents Taft and Wilson withdrew approximately 10,500² km in Idaho, Utah and Wyoming (1910–1917) and formally created the Western Phosphate Reserve. The Mineral Leasing Act of 1920 rendered moot the need for phosphate withdrawals. Eventually, the Department of Interior created Known Phosphate Leasing

⁷ Taft. 1910. Special Message to Congress. January 14. †

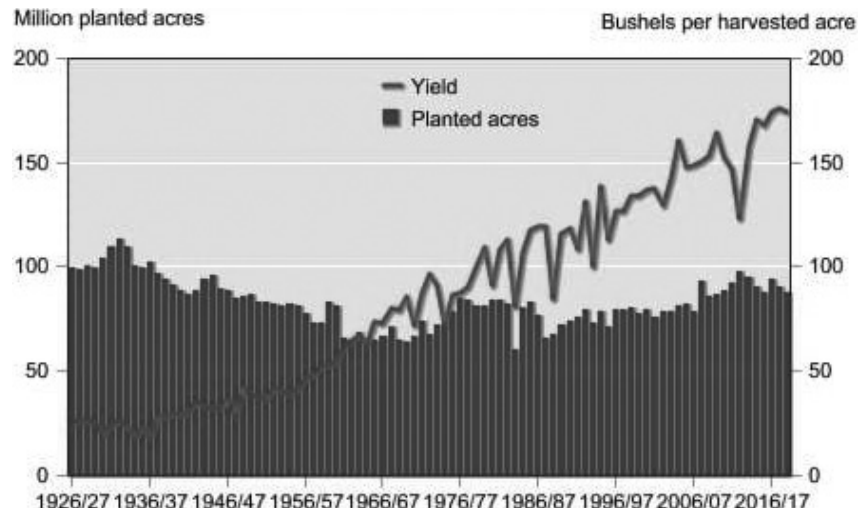
⁸ USGS. *A History of Phosphate Mining in Southeastern Idaho*. †

⁹ Hein. 2004. *Life Cycle of the Phosphoria Formation*. Elsevier B.V. Amsterdam.

Areas (KPLAs) where the phosphate resource is available only through the competitive leasing provisions of the Mineral Leasing Act.

Western phosphate is a major source of phosphate used to grow crops in the United States. Approximately 1.2 million tons of phosphate fertilizer (as P_2O_5) is produced in the Western Phosphate field. This can provide sufficient fertilizer to grow 24 million acres of corn.¹⁰ For context, in 2015 approximately 90 million acres of corn was grown in the United States.¹¹ Fertilizers are one reason that corn production has increased, while the number of planted acres has decreased (see *Figure 1*). This “value add” by fertilizers such as phosphate, is one reason why having strong domestic sources of phosphate is important for the United States to produce its own food supply.

Figure 1. U.S. Corn Acreage and Yield



[<https://www.ers.usda.gov/webdocs/charts/63406/cornplantedacresandyield.jpg?v=43054>]

Source: USDA, World Agricultural Outlook Board, World Agricultural Supply and Demand Estimates.

Updated: November 2017. [Online version updated June 2018.]

The Production of Domestic Phosphate Fertilizers is Threatened by Government Policies and Unfair Trade

The phosphate supply in the United States is subject to disruption due to the difficulty in obtaining approvals for mining of phosphate ore, an ever increasing regulatory burden and unfair competition from foreign sources.

Obtaining Approvals for Phosphate Mining is Growing in Difficulty

Avoiding disruption of supply and maintaining a viable phosphate fertilizer industry in the United States requires a reliable and predictive process to access phosphate ore. As described earlier in these comments, a significant portion of the phosphate reserves present in the United States are found in federally managed land in the western U.S. Thus, phosphate reserves exist and can be developed in the right economic and regulatory environment. However, substantial hurdles discourage opening new mines and processing facilities.

- As noted above, phosphate deposits in the Western United States are often located on Federal lands. This requires Federal permitting as required by the National Environmental Policy Act (NEPA). States also have permitting requirements. Obtaining permits has become very unpredictable due to permitting process delays, changes in the policy preferences of Administrations, and litigation.

¹⁰ California Fertilizer Association. 1995. *Western Fertilizer Handbook*, 8th edition. Approximately 100 lbs. of P_2O_5 is needed per acre of corn.

¹¹ Department of Agriculture. 2018. Economic Research Service. <https://www.ers.usda.gov/topics/crops/corn/background.aspx>.

tion. Often, the environmental studies, permitting processes and subsequent litigation result in permitting expenses exceeding tens of millions of dollars. These costs are incurred without any certainty of being able to successfully develop a mine.

- A good example is Simplot's new Dairy Syncline Mine project in Eastern Idaho, which took 12 years to secure approval from the Federal Government. After submission of the proposed action in 2008, the notice of intent for the Dairy Syncline mine project was published in 2010 but Federal approval of the project did not occur until 2020.¹² Opening the mine would grow Simplot's capacity and certainty to produce phosphate fertilizer for decades.
- Adding to the lengthy delays and inefficient process, there are many problems with the process after the agency issues its decision. Typically, before a plaintiff can challenge a final agency decision in Federal court, it must exhaust all administrative remedies. Courts are allowing too many loopholes in this important procedural step which signals to the agency and company that a legal challenge maybe facing the project. This has a significant influence on development of the mine. The current statute of limitations for administrative review (generally 6 years) is far too long to promote lawful development; and even though permitting decisions usually span multiple Administrations, changes in Administrations and their particular policy preferences is leading to major uncertainty during litigation. Finally, if a project has commenced, environmental plaintiffs should be required to post a bond during the pendency of the litigation.
- Simplot is concerned that permitting delays will be exacerbated by recent rule changes related to NEPA which require Federal agencies to engage in lengthy environmental assessments and consultations, including for potential issues that are indirect, not within the control of the permitting agency or remote in time or geography.¹³

Regulatory Burdens are Increasing

In addition to the difficulties in getting approvals to access phosphate ore, the Federal Government is proposing new regulations and Federal land management policies that will undoubtedly complicate the ability to develop and operate phosphate mining facilities.

Federal land management policies and rules dramatically affect the availability of mineral resources for development. In the Western Interior Great Basin, the conservation of the Greater Sage Grouse [*Centrocercus urophasianus*] has been debated both by agencies and Federal courts for over 2 decades. In the past decade the Federal Government has produced three different management plans, with some being at odds with individual state management plans. Too often though, the Federal Government approach is to remove site-specific decision making and replace it with large-scale land withdrawals and very prescriptive land management requirements. On December 30, 2016, the BLM issued a Notice of Amended Proposed Withdrawal, Draft Environmental Impact Statement, with associated Notice of Public Meetings in Idaho, Montana, Nevada, Oregon, Utah, and Wyoming in the *Federal Register*,¹⁴ proposing to withdraw approximately 10 million acres of Federal land from mineral development.¹⁵ This includes millions of acres that were identified as part of the Western Phosphate Reserve. Prescriptive requirements that set disturbance boundaries and disturbance densities further limit the ability to successfully develop mineral resources. A more constructive approach to the conservation of species of concerns is to work with state agencies and other stakeholders (like mining companies) to develop mitigation and management methods that allow multiple use to occur while enhancing habitat for such species.

Voluntary mitigation discussions need to consider a wide variety of opportunities including preservation (such as establishing conservation easements on private land), the establishment of mitigation banks, public-private partnerships, conservation plans, habitat restoration, noxious weed control, fence marking/removal, ripar-

¹²"BLM and USFS Approve Dairy Syncline Mine Project," † U.S. Department of the Interior Bureau of Land Management (Apr. 7, 2020), available at <https://www.blm.gov/press-release/blm-and-usfs-approve-dairy-syncline-mine-project>.

¹³*National Environmental Policy Act Implementing Regulations Revisions*, 87 FED. REG. 23453 (April 20, 2022).

¹⁴*Sagebrush Focal Areas Withdrawal Environmental Impact Statement Idaho, Montana, Nevada, Oregon, Utah and Wyoming* † (Draft EIS) 81 FED. REG. (December 30, 2016), page 96478.

¹⁵Such large withdrawals are not supported by the scientific record; mining affects less than 0.1 percent of greater sage grouse across its occupied range. *Federal Register*, Vol. 80, (October 2, 2015), page 59915. †

ian restoration projects, prescribed fire (where appropriate), fuel breaks, green strips and payment *in lieu*.¹⁶

Recent EPA regulations or proposed regulations add further regulatory hurdles. The recent finalization by the Environmental Protection Agency (EPA) of the *Waters of the United States (2023 WOTUS rule)*.¹⁷ This new regulation provides EPA (and implementing agencies) jurisdiction over ditches, non-navigable waters, ephemeral and other isolated waters that are currently not regulated as WOTUS. Thus, additional permitting is now required, along with other requirements (monitoring, *etc.*). Also, there will be new uncertainty in Clean Water Act (CWA) Section 404 Permits¹⁸ due to an expansion in jurisdiction of these “other waters” including additional tributaries and wetlands that EPA now argues is covered by Justice Kennedy’s “significant nexus” standard.¹⁹ Just as absurd as these new requirements is EPA promulgating this new rule while the Supreme Court is considering a case which has the potential to significantly limit EPA’s authority under the Clean Water Act.²⁰

Finally, at the end of 2022, EPA proposed a Clean Water Act regulation that establishes a new designated use for WOTUS Tribal reserved rights.²¹ The proposal usurps the authority of states (the delegated authority) over establishing its own designated uses for water and the appropriate water quality standards. The proposed rule potentially dictates that states must set water quality criteria based on pre-industrial conditions (or at least based on conditions in the 19th Century). The proposal stipulates water quality should be set at levels to protect “Tribal reserved rights unsuppressed by water quality or available aquatic resources.” The impact on current activities regulated under the CWA as well as future activities would likely be substantial. *Such new water quality criteria will be unattainable due to the inputs (such as extremely high fish consumption rates) used to calculate the criteria.* Also, the proposal can potentially affect water rights.

Foreign Phosphate Threatens Domestic Production

Foreign production of phosphate fertilizers is increasing and imports of such materials into the United States have increased substantially. Historically, the largest sources of phosphate imported into the United States are from Morocco and Russia (see *Table 1*). In recent years, China has also been a major exporter of phosphate into the United States. Overseas, major phosphate production projects (especially in Saudi Arabia and Morocco) are being built, creating new capacity that will drive additional foreign phosphate into the United States. However, these foreign sources have engaged in unfair trade practices and do not have to comply with the same level of environmental standards as in the United States.

Table 1—MAP/DAP Imports (metric tons) to the U.S.

Country	2017	2018	2019
Morocco	1,177,500	1,518,000	1,707,800
Russia	383,900	840,200	738,700
Saudi Arabia	32,800	167,900	224,700
Mexico	27,000	104,800	162,100

Expansion of overseas operations also threatens the economic viability of domestic phosphate producers. Saudi Arabia in the past decade has invested billions of dollars into phosphate production. The Al-Jalamid Phosphate fertilizer complex in Saudi Arabia is capable of producing approximately three (3) million metric tons of

¹⁶In Utah, Simplot has an active partnership with the Utah Division of Wildlife Resources focused on restoring and improving habitats used by big game and sage grouse. Projects completed at our Vernal Utah mine include removal of approximately 400 acres of pinyon/juniper to help establish sagebrush and understory as well as re-seeding and planting of sagebrush to enhance sage grouse habitat. [2018. Simplot Comments on the Utah Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Conservation. July 25.]

¹⁷88 *Federal Register* 3004, † (January 18, 2023), pages 3004–3144.

¹⁸Section 402 of the CWA establishes the national pollution discharge elimination system which is a national permit program that may be administered by EPA, states, or Indian Tribes. Section 404 of the CWA regulates permits for discharge of dredge or fill into navigable water, which is defined by the waters of the United States definition and is administered jointly by the Army Corp of Engineers and EPA.

¹⁹547 U.S. 715, *Rapanos Et ux., et al. v. United States*, June 19, 2006. †

²⁰*Sackett v. EPA*, 8 F.4th 1075 (9th Cir. 2021), *cert. granted* January 24, 2022. †

²¹*Federal Register*. 2022. † Vol 87 (232), December 5. p. 74361.

diammonium phosphate fertilizer (DAP) (approximately 1.5 million metric tons as P_2O_5).²² A second mega phosphate fertilizer being built at Waad al-Shamal will increase total Saudi Arabian production to over six (6) million metric tons of DAP (3 million metric tons of P_2O_5 annually).²³ These projects will make Saudi Arabia the third largest phosphate fertilizer manufacturer in the world. Similar investments have been made in Morocco. Morocco's phosphate and derivatives exports reached \$11.31 billion in 2022. That shows a 43.9% increase from the previous year.²⁴

It can be challenging to compete against foreign sources that do not have the same environmental standards and do not incur related compliance costs. For example, the Moroccan state-owned phosphate fertilizer monopoly, OCP, S.A., has a practice of simply dumping phosphogypsum waste from its factories into the coastal waters in Morocco.²⁵ These irresponsible practices starkly contrast with the highly regulated management of phosphogypsum in the United States. The environmental compliance costs for our facilities amount to millions of dollars a year—costs our import competition do not face. Addressing this regulatory arbitrage that benefits foreign producers would help support U.S. manufacturing.

Challenges have also occurred from unfairly traded and subsidized imports of phosphate fertilizers from Morocco's state-owned monopoly, OCP, S.A. ("OCP"), and from Russian companies owned by oligarchs. Fortunately, the U.S. Government implemented trade remedies to combat these subsidized imports and make significant headway in restoring fair market conditions. Furthermore, the Section 301 tariffs imposed by the U.S. Government covered phosphate fertilizer from China, which had started to surge into this country. Well before the recent price spikes we have seen for fertilizers generally, these trade remedies brought U.S. prices more into line with global prices, provided a market opening for fairly traded imports from other sources, and helped U.S. producers remain competitive.

It should also be noted that the single Moroccan producer, OCP, immediately cut off its shipments of phosphate fertilizers to U.S. farmers as soon as the Commerce Department and the ITC initiated their investigations in July 2020, well before any tariffs were applied. This shows that the Moroccan supplier is more than willing to squeeze American farmers and disrupt their supplies when it suits foreign interests. This is compelling evidence that phosphate is extremely vulnerable to disruption and it is critical to support U.S. production efforts.

Solutions for Increasing Domestic Phosphate Fertilizer Production

There are numerous steps that the Federal Government can take to increase the production of domestic phosphate fertilizer. Such steps require coordination in changes in policy direction and regulation changes across the Federal Government including the Departments of Interior, Agriculture, and Commerce and agencies such as the Environmental Protection Agency.

- *Recognize the importance of phosphate.* Add this mineral to the Federal list of critical materials needed to ensure the nation's food supply.
- *Adopt Efficient and Streamlined Permitting Practices to Facilitate New Mines and Production.* Meaningful reform for permitting includes: (a) establishing a single lead agency for all permitting requirements that incorporates (and utilizes) state agencies and their programs; (b) issuance of a single agency decision rather than multiple Federal agency decisions—each of which are subject to litigation; (c) and set limits for judicial review such as limiting legal challenges to being filed within 60 days of the final agency decision, requiring the plaintiffs to post a bond when the project has commenced, and limiting the scope of appeals and litigation to issues already raised within the NEPA process.
- *Reform NEPA requirements to a reliable and predictive process.* It is necessary to strengthen and reaffirm the original procedural intent of NEPA. This has been lost within the implementation of NEPA. It is no longer the planning tool it was designed to be, nor does it inform or facilitate meaningful input from the public. Instead, it has become the tool used by organizations who oppose domestic mineral extraction in general, as well as multiple use on Federal lands, to prevent responsible and lawful mineral development.

²² International Fertilizer Association. 2004. Production and International Trade Conference, Dubai, UAE. Note, this project produces approximately 3 million metric tons of DAP; for conversion to P_2O_5 , it is assumed that 50% of the final product is P_2O_5 .

²³ REUTERS. 2016. *Saudi Ma'aden seen ramping up phosphate output from Waad al-Shamal in 2017*. † November 24.

²⁴ Kasraoui, Safaa, "Morocco's Phosphate Exports Hit Over \$11 Billion in 2022" † *Morocco World News*, February 3, 2023. <https://www.moroccoworldnews.com/2023/02/353853/morocco-phosphate-exports-hit-over-11-billion-in-2022>.

²⁵ CITE. **Editor's note:** this reference has been reproduced herein as submitted.

- *Cease Large-Scale Withdrawal of Federal Lands for Mineral Access.* Too often Federal land management is singularly focused on a specific natural resource issue (such as conservation of a single species or ecological attribute). Instead, Federal agencies need to take a more holistic and comprehensive approach that preserves the concept of multiple use, which is the foundation of Federal land management statutes. Instead of extremely prescriptive mandates, Federal agencies should instead truly collaborate with local communities, state natural resource agencies and other stakeholders (such as mining companies) to develop durable and effective species and ecological conservation measures.
- *Change the Approach Used by EPA to Environmental Regulation.* The 2023 WOTUS rule and the proposed Clean Water Act rule creating a new designated use (Tribal reserved rights) are examples of EPA creating new, broad and expansive environmental requirements that impose substantial burdens on the regulated community and diminish delegated authorities to the states. An alternative approach would be dialogue with state agencies and stakeholders (including the regulated community) on better definition of environmental issues and how existing rules and programs can address such challenges. In other words—looking for cooperation rather than Federal control.
- *Create a Regulatory and Policy Environment that Supports Oil and Gas Supply.* Derivative products such as ammonia and sulfuric acid are essential building blocks for fertilizers. The impact of energy sector policies on fertilizer production and costs is substantial. When natural gas is expensive, domestic production of ammonia and other fertilizer inputs can be negatively affected. This relationship was demonstrated in a 2009 USDA report analyzing increases in fertilizer prices between 2002 and 2008.²⁶ Likewise, fertilizer production depends on sulfur (sulfuric acid), which is also derived from oil and gas production.²⁷
- *Implement Policies that Support Free and Fair Trade.* Fairly traded imports will always compliment domestic manufacturing in the U.S. market; however the Federal Government needs to use appropriate trade remedies for unfairly traded fertilizer.

SUBMITTED LETTER BY HON. BRAD FINSTAD, A REPRESENTATIVE IN CONGRESS FROM
MINNESOTA

February 28, 2023

Hon. THOMAS J. “TOM” VILSACK,
Secretary,
U.S. Department of Agriculture,
Washington, D.C.

Dear Secretary Vilsack,

We are writing to urge you to take immediate action by issuing an extension of the Time-Limited Trial for pork processing plants in the New Swine Inspection System (NSIS), avoiding another unnecessary hit to our nation’s hog farmers and the pork processing capacity they rely on.

As you know, on June 30, 2021, an estimated 2.5 percent of the pork industry’s slaughter capacity was taken off-line. Plants that had been operating for years under the Hazard Analysis and Critical Control Point (HACCP) Inspection Models Project (HIMP) program were required to reduce production despite compelling data about the safety of NSIS workers.

On March 4, 2022, nearly 9 months after the court-ordered slowdown, the first NSIS plant was allowed to return to its former line speed, through a 12 month Time-Limited Trial. We commend you for your work to ensure these NSIS facilities were able to get back to their full operational capacity, however, we are rapidly approaching the end of the respective 12 month periods for the plants participating in the trial.

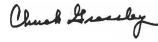
Without an extension, producers will again be facing lost market leverage and fewer options for selling their hogs, potential contract cancellations, and greater transportation costs. Our family farmers, the food supply chain, and consumers need the certainty that our pork processing capacity will remain strong, and plants will not be forced to reduce production and thereby hog purchasing.

²⁶ *Factors Contributing to the Recent Increase in U.S. Fertilizer Prices*, † USDA ERS (Feb. 2009), at 8.

²⁷ Also, it needs to be recognized that sulfur supply is also important for the production of lithium. Sulfuric acid is a key chemical needed in the processing of lithium ores.

Accordingly, we strongly urge you to issue an extension of the Time-Limited Trial and provide written notice to NSIS plants prior to the end of their 12 month trial. We also implore USDA to develop a permanent solution for these facilities that allows them to function at full operational capacity rather than continued short-term trials. Thank you for your time and attention to this important matter.

Sincerely,



Hon. CHUCK GRASSLEY,
United States Senator



Hon. BRAD FINSTAD,
Member of Congress



Hon. JOHN BOOZMAN,
United States Senator



Hon. GLENN THOMPSON,
Member of Congress



Hon. JONI ENRST,
United States Senator



Hon. MICHELLE FISCHBACH,
Member of Congress



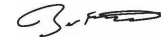
Hon. DEB FISCHER,
Member of Congress



Hon. MIKE FLOOD,
Member of Congress



Hon. ADRIAN SMITH,
Member of Congress



Hon. RANDY FEENSTRA,
Member of Congress



Hon. ASHLEY HINSON,
Member of Congress



Hon. MARIANNETTE MILLER-MEEKS,
Member of Congress



Hon. TRACEY MANN,
Member of Congress

SUBMITTED LETTER BY HON. JOHN W. ROSE, A REPRESENTATIVE IN CONGRESS FROM
TENNESSEE

May 25, 2022

Hon. Gary Gensler,
Chairman,
Securities and Exchange Commission,
Washington, D.C.

Dear Chair Gensler,

We write to express significant concerns with the impact the Securities and Exchange Commission's (SEC) proposed rule on "Enhanced and Standardization of Climate-Related Disclosures for Investors" will have on the agricultural community.

It is our strong belief that this proposed rule, if promulgated, would be a significant and unworkable regulatory burden, and a considerable departure from the SEC's mission to protect investors, facilitate capital formation, and foster fair, orderly, and efficient markets. It is not within the purview of the SEC to regulate farmers and ranchers, which is what this rule would do by requiring public companies to disclose their Scope 3 greenhouse gas (GHG) emissions. To do business with public companies, small farms would be required to disclose a significant amount of climate-related information. But unlike large corporations, small farms do not have full-scale compliance departments. Imposing these additional reporting requirements could disqualify small, family-owned farms from doing business with companies which could lead to more consolidation in the agriculture industry.

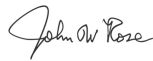
Farmers are already regulated by agencies at the local, state, and Federal levels. There are currently multiple programs at the Federal level to help farmers implement conservation practices. Bureaucrats in Washington, D.C.—specifically unelected SEC staff—who have no jurisdiction over environmental policy and who have never stepped foot on a farm should not have such influence over how farmers take care of their land.

We also have concerns about the specific information from each farm that would have to be reported under this proposal. The time and energy put into complying with this new regulation will divert American farmers away from their primary goal of producing our nation's food, fuel, and fiber. As this rule is written, it is also unclear how farmers will be protected from privacy concerns as they, unlike corporations, live at their places of business where they would now have to disclose significant amounts of information. In *American Farm Bureau Federation v. EPA*, the 8th U.S. Circuit Court for Appeals affirmed that public disclosure of farmers' personal information would constitute a "substantial" and "clearly unwarranted invasion of personal privacy."¹ Similarly, the SEC should consider how the disclosure of Scope 3 GHG emissions could have privacy implications for farmers and scrap this rule entirely to ensure their private property information would not end up on any public disclosures.

Finally, we are concerned that the comment period, although recently extended until June, is inadequate given the magnitude of this proposed rule, which totals 510 pages and has 1,068 technical footnotes. The Commission's use of abbreviated comment periods for complex rules like this as well as the lack of consistency across rulemakings is troubling, as it will result in less, much-needed input from the public on these important issues.

We appreciate your attention to our concerns and request a response no later than June 24, 2022.

Sincerely,



Hon. JOHN W. ROSE,
Member of Congress



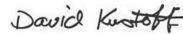
Hon. GLENN THOMPSON,
Member of Congress



Hon. SCOTT DESJARLAIS,
Member of Congress



Hon. MARK E. GREEN,
Member of Congress



Hon. DAVID KUSTOFF,
Member of Congress



Hon. ELAINE G. LURIA,
Member of Congress



Hon. J. FRENCH HILL,



Hon. VIRGINIA FOXX,

¹*American Farm Bureau Federation v. EPA*, 836 F.3d 963 (8th Cir. 2016).

Member of Congress

Ron Estes

Hon. RON ESTES,
Member of Congress

Mariannette Miller-Meeks

Hon. MARIANNETTE MILLER-MEEKS,
Member of Congress

Mo Brooks

Hon. MO BROOKS,
Member of Congress

Barry Moore

Hon. BARRY MOORE,
Member of Congress

Ben Cline

Hon. BEN CLINE,
Member of Congress

Mike Carey

Hon. MIKE CAREY,
Member of Congress

Pete Sessions

Hon. PETE SESSIONS,
Member of Congress

Lance Gooden

Hon. LANCE GOODEN,
Member of Congress

Tracey Mann

Hon. TRACEY MANN,
Member of Congress

Jodey C. Arrington

Hon. JODEY C. ARRINGTON,

Member of Congress

Thomas Massie

Hon. THOMAS MASSIE,
Member of Congress

Jerry L. Carl

Hon. JERRY L. CARL,
Member of Congress

Ted Budd

Hon. TED BUDD,
Member of Congress

Andy Biggs

Hon. ANDY BIGGS,
Member of Congress

Mary E. Miller

Hon. MARY E. MILLER,
Member of Congress

William R. Timmons IV

Hon. WILLIAM R. TIMMONS IV,
Member of Congress

Chris Jacobs

Hon. CHRIS JACOBS,
Member of Congress

Mike Rogers

Hon. MIKE ROGERS,
Member of Congress

Kelly Armstrong

Hon. KELLY ARMSTRONG,
Member of Congress

Doug LaMalfa

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Member of Congress



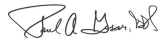
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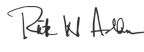
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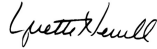
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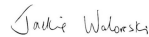
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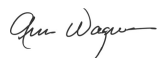
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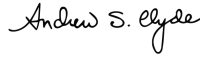
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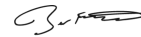
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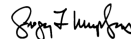
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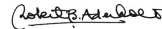
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SUPPLEMENTARY MATERIAL SUBMITTED BY PETER FRIEDMANN, EXECUTIVE DIRECTOR,
AGRICULTURE TRANSPORTATION COALITION

Insert

Mr. DAVIS of North Carolina. . . .

And I heard Mr. Duvall—and maybe I will just leave this as a comment at this point as we run out of time. How do we really make this nexus disconnection when there are so many job opportunities with the lack of our students engaging? There is some disconnect here that is going on.

Thank you Congressman Davis.

This is a very important question, as it is a challenge that is facing all sectors of agriculture, all commodities, all geographies, and all components. There is a significant shortfall of labor in agriculture, exacerbated by the lack of a pipeline of young people entering the agriculture supply chain—from the planting and harvesting, to the raising of livestock and the processing industry, the elevators and cold storage, the transport to the customer—all modes, rail, truck, ocean—both international and domestic.

Simply not enough young people consider agriculture for a career. Part of this is the urbanization of America, with a greater percentage of the U.S. population clustered in cities and suburbs, every year. The young people are simply not exposed to agriculture.

Part of it is the barriers thrown up by government and others—such as the barriers facing a young person who wants, after high school to become a truck driver. Licensing, insurance restrictions serve to divert many who would consider obtaining a CDL and beginning to drive, to other employment, such as construction. There are pilot programs at Dept of Labor, but participation is quite limited as criteria are restrictive; removing some of the restrictions would increase the numbers. New driver training programs are currently proposed in legislation, some in the T&I Committee's jurisdiction. The Committee is urged to move forward this Session.

Our public schools, mainly high schools, need to offer an introduction into careers in agriculture. These would be tailored to the agriculture commodities in the region where the high school is located. There are community colleges which are engaging with local agriculture business, to provide internships. Those are invaluable, with a very high success rate; while encouraging, there are not enough of them.

Finally, another addition to the high school curriculum would be immensely helpful, a basic course—where does our food come from? It seems that a large segment of our country's population simply has no idea where our food comes from—meat, dairy, cereals/bread/grains, *etc.* Or how it gets to us.

The Agriculture Transportation Coalition would be honored to work with both the Agriculture and T&I Committees, to develop a pilot program to educate and prepare young people to enter the agriculture production and transportation supply chain, authorized jointly by these Committees and administered by USDA and DOT. We stand ready to work with both Committees.

Thank you Mr. Davis for the opportunity to share some ideas that could lead to expansion in young person participation in agriculture.

PETER FRIEDMANN,
Executive Director,
Agriculture Transportation Coalition.

SUPPLEMENTARY MATERIAL SUBMITTED BY MIKE BROWN, PRESIDENT, NATIONAL CHICKEN COUNCIL

March 9, 2023

Chairman Thompson:

Thank you for your recent invitation to testify before the House Committee on Agriculture on February 28, 2023, in the hearing entitled, "Uncertainty, Inflation, Regulations: Challenges to American Agriculture."

In addition to the written testimony NCC submitted prior to the hearing, NCC respectfully requests that the attached report from the American Enterprise Institute entitled, "Poultry Tournaments: Risk Management or Just a Game of Chicken?" be included in the Congressional Record as supplementary material related to my testimony.

Respectfully,



MIKE BROWN,
President, National Chicken Council.

ATTACHMENT



Poultry Tournaments: Risk Management or Just a Game of Chicken?

By Barry K. Goodwin

January [3,] 2023

Key Points

- The four-firm industry concentration ratio for chicken processors is lower than for pork or beef, but concerns about a unique tournament contracting system have prompted calls for increased oversight that would raise further concerns about costs and the public release of confidential data.
- However, competition through tournaments that offer farmers significant risk protection has encouraged innovation that has increased efficiency in poultry production, ultimately benefiting growers and processors and lowering prices for consumers.
- Claims that tournaments lower poultry farmers' incomes do not square with the evidence that on both median and average poultry farms, household incomes are higher than those of both other farm and non-farm households.

The Biden Administration seems to have decided that any suggestion of market power by buyers of livestock from the farm is necessarily harmful to farm businesses and consumers. Thus, the Administration's argument continues, contracts between farms and processors should be viewed as vehicles for hiding information about prices and enabling further exercise of market power by processors that lower farm gate prices and raise consumer prices.

Recent proposals to regulate and limit the tournament production contracts widely used in the poultry industry are clear examples of the Administration's approach. However, there is no evidence to support the claims that contracting in the livestock industry has harmed farm gate prices or consumer welfare. On the contrary, by creating incentives for improved product quality, quality-based contracts have greatly benefited the beef industry and consumers.¹

Similarly, as discussed in this report, tournament contracts in the poultry industry have provided incentives for increased efficiency and lower production costs. In fact, there is overwhelming empirical evidence that concentration and contracting have enabled livestock markets to function more efficiently, with benefits for all participants—farmers, processors, and consumers. In short, when it comes to contracting and concentration in the livestock industry, the message to the Biden Administration and other critics should be: "Don't mess with success."

Marketing and Production Contracts in Agriculture

The U.S. livestock industry has gradually transitioned to a system under which contracts often govern marketing and production. *Figure 1* provides information about the extent of marketing and production contracts for individual crops and livestock commodities in the U.S., and *Figure 2* shows the extent to which such contracting increased between 1996 and 2020.

Marketing contracts, widely used for crops, differ from production contracts in that the farmer retains ownership of the product, and prices, or pricing mechanisms (for example, through the use of futures contracts), are set before marketing.

Production contracts are more common for livestock commodities and extensively used in the pork and poultry sectors. In such contracts, farmers provide management, labor, and production assets, while processors, often called integrators,² provide most of the inputs, including the beginning stock (*e.g.*, piglets and chicks), feed, veterinary services, and other variable inputs.

For broilers—chickens raised for meat—over 90 percent of production is managed under contracts.³ Typically, the integrator owns the animals, and the farmer follows prescribed methods of production. This form of production contract is also becoming more common in the beef cattle industry. When livestock reach the appropriate size and age, a processor takes delivery and manages slaughtering, processing, and marketing the meat products.

¹Ted C. Schroeder, "Policies That Support Growth in Beef Demand Drive Industry Prosperity and Benefit Consumers," American Enterprise Institute, November 2, 2022, <https://www.aei.org/research-products/report/policies-that-support-growth-in-beef-demand-drive-industry-prosperity-and-benefit-consumers>.

²Processors in the poultry and pork industry are called integrators because they vertically integrate different stages of production.

³See Linda Qiu, "Biden Administration Aims to Increase Regulation and Competition in the Poultry Industry," *New York Times*, May 26, 2022, <https://www.nytimes.com/2022/05/26/business/biden-poultry-processors-growers.html>.

Production contracts are widely used in livestock markets where production can be confined and controlled to obtain more consistent product quality and for attributes preferred by consumers. They are often criticized as lacking in transparency because their terms are usually confidential. Further, when most production is commissioned through contracts, prices in cash markets may not be relevant for farmers' and processors' production decisions and may be lower and more volatile because animal quality cannot be guaranteed and is likely to be lower.

Market Concentration

The meat industry has also become highly concentrated, with a small number of processors handling a significant share of production. A White House press release noted, with significant alarm,

Four large meat-packing companies control 85 percent of the beef market. In poultry, the top four processing firms control 54 percent of the market. And in pork, the top four processing firms control about 70 percent of the market. . . . When dominant middlemen control so much of the supply chain, they can increase their own profits at the expense of both farmers who make less—and consumers—who pay more. Most farmers now have little or no choice of buyer for their product and little leverage to negotiate, causing their share of every dollar spent on food to decline.⁴

There are many good reasons for concentration in the livestock industry related to economic efficiency and substantially reduced production cost. However, alarmists often point to concentration as *de facto* proof of price discrimination through market power without examining the evidence.

The White House press release, for example, claims that “the meat and poultry processing sector is a textbook example [of a] lack of competition hurting consumers, producers, and our economy.”⁵ In fact, in the livestock processing sector, average costs fall substantially as scale increases, resulting in market concentration and some degree of market power. The empirical evidence is clear: Concentration has lowered processing costs, and processor marketing margins sufficiently result in higher prices for farmers' livestock and lower prices for consumers at the grocery store.⁶ Bigger is indeed sometimes better, for everyone.⁷

Tournament Production Contracts

The Biden Administration has expressed many concerns about the lack of competition in the meat-processing sector, many of which are not consistent with the evidence about the impacts of increased concentration on either prices received by farmers or prices paid by consumers.⁸ The high level of market concentration in poultry processing has received special attention. In contrast to contract arrangements for cattle and pork, poultry contracts operate uniquely by using a tournament system to reward producers.

⁴ White House, “Fact Sheet: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain,” press release, January 3, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/03/fact-sheet-the-biden-harris-action-plan-for-a-fairer-more-competitive-and-more-resilient-meat-and-poultry-supply-chain>.

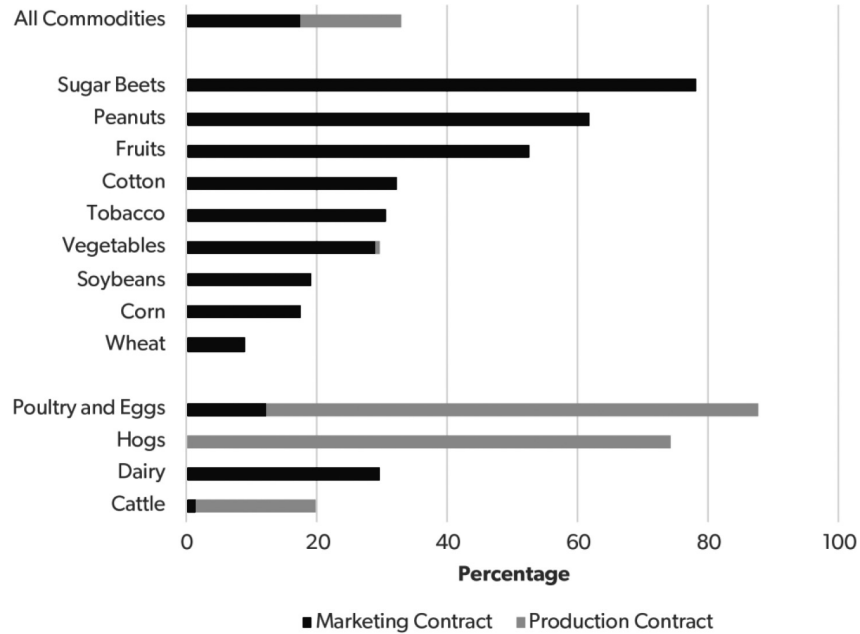
⁵ White House, “Fact Sheet: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain.”

⁶ Ted Schroeder's recent comprehensive review of the empirical literature examining the impact on contracting and market concentration on beef prices and quality provides compelling support for this conclusion. See Schroeder, “Policies That Support Growth in Beef Demand Drive Industry Prosperity and Benefit Consumers.”

⁷ In fact, any link between market concentration and market power without detailed information about purchasing and marketing practices is purely speculative and tenuous. A high degree of competition may exist even when three of four large companies seem to dominate the market. For example, the White House press release notes that the four-firm industry concentration ratio for poultry is 54 percent but fails to note that many other processing companies produce the remaining 46 percent of production.

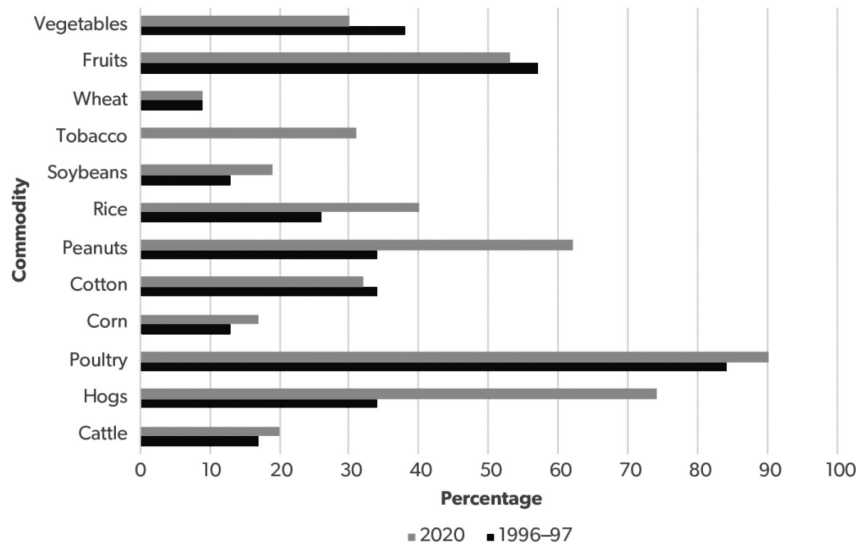
⁸ See Ted C. Schroeder, “Subsidized Beef Packing Expansion Unlikely Sustainable,” American Enterprise Institute, February 1, 2022, <https://www.aei.org/research-products/report/subsidized-beef-packing-expansion-unlikely-sustainable/>; Vincent H. Smith and Benjamin Goren, “Where's the Pork in the Surge in Recent Pork Prices? Maybe Nowhere, and Not in the Meatpacking Industry,” American Enterprise Institute, February 1, 2022, <https://www.aei.org/research-products/report/wheres-the-pork-in-the-surge-in-recent-pork-prices-maybe-nowhere-and-not-in-the-meatpacking-industry/>; and Schroeder, “Policies That Support Growth in Beef Demand Drive Industry Prosperity and Benefit Consumers.”

Figure 1. Production and Marketing Contracting by Commodity in 2020



Source: U.S. Department of Agriculture, Economic Research Service, "Farm Structure and Contracting," <https://www.ers.usda.gov/topics/farm-economy/farm-structure-and-organization/farm-structure-and-contracting>.

Figure 2. Changes in the Adoption of Marketing and Production Contracts, 1996-97 to 2020



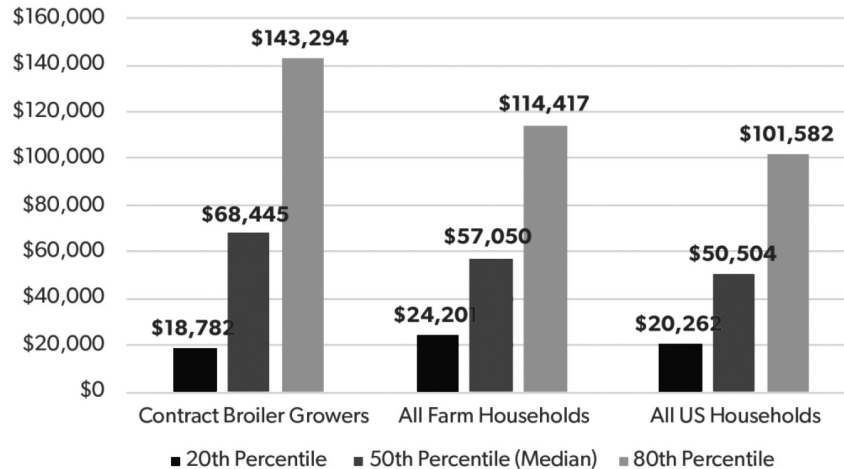
Note: This figure includes the value of production under marketing and production contracts combined. An average of 1996 and 1997 was used to provide a more statistically reliable estimate. No tobacco production was covered by contracts in 1996-97.

Source: Christine Whitt, "Farmers' Use of Contracts Has Declined over Last 25 Years," U.S. Department of Agriculture, Economic Research Service, June 23, 2022, <https://www.ers.usda.gov/amber-waves/2022/june/farmers-use-of-contracts-has-declined-over-last-25-years>.

Under that system, producers are rewarded using metrics about their performance relative to other similarly situated producers regarding feeding efficiency, quality, medical costs, flock mortality rates, and other factors, all of which affect production costs and the value of the birds.⁹ Thus, rewards are typically based on a comparison of overall production costs (chick, feed, and medical costs) per pound of meat produced relative to other producers in each group of growers. Contracts are often automatically renewed unless the farm fails to comply with their terms, including following the production practices prescribed in the contracts.

Critics of the tournament system have pointed to a 2011 U.S. Department of Agriculture (USDA) report that found that although farm households that raise broilers have higher incomes, they experience more variation in household incomes.¹⁰ In 2011, as shown in *Figure 3*, at the 80th percentile, broiler growers had household incomes of \$143,294, compared to only \$114,417 for other farm households and \$101,582 for all U.S. households. Median household incomes for the same relative comparisons are \$68,445, \$57,050, and \$50,504, suggesting that more than ½ of all broiler households had significantly higher incomes than other farm households and U.S. households in general. At the bottom end of the income distribution, broiler producers do a little worse, though the differences are modest.

Figure 3. Broiler Contract Growers' Incomes Relative to Other Farmers'



Source: James M. MacDonald, "Financial Risks and Incomes in Contract Broiler Production," U.S. Department of Agriculture, Economic Research Service, August 4, 2014, <https://www.ers.usda.gov/amber-waves/2014/august/financial-risks-and-incomes-in-contract-broiler-production>.

Some commenters have used these findings to argue that incomes of broiler households vary more than incomes of other farm and non-farm households. However, most of the differences occur at the upper end of the income distribution. Thus, the reasonable evidence-based conclusion is that broiler production under tournament contracts tends to result in substantially higher incomes than those of other farm households and U.S. households in general.¹¹ Broiler production appears to be

⁹For a detailed description of the tournament system for broiler production, see Charles R. Knoeber, "A Real Game of Chicken: Contracts, Tournaments, and the Production of Broilers," *Journal of Law, Economics, and Organization* 5, no. 2 (Autumn 1989): 271–92.

¹⁰See James M. MacDonald, "Financial Risks and Incomes in Contract Broiler Production," U.S. Department of Agriculture, Economic Research Service, August 4, 2014, <https://www.ers.usda.gov/amber-waves/2014/august/financial-risks-and-incomes-in-contract-broiler-production>.

¹¹As an aside, median farm households made about \$4,500 more per year than the median U.S. household did, and broiler producers made even more—about \$18,000 more in 2011.

a viable and rewarding business, likely because it is largely driven by tournament contracts that incentivize poultry farms to be innovative and efficient.

The extent of that innovation is reflected by the significant changes in poultry production that have taken place. While prices for chicken have fallen, broiler production has been profitable in recent years because of advances in production techniques that increased yields and lowered costs. In 1955, it took 73 days to produce the average broiler, which weighed 3.1 pounds and required 2.85 pounds of feed for each pound of chicken produced. By 2011, it took only 38 days to produce a 4 pound broiler, requiring only 1.74 pounds of feed for each pound of gain.¹² In response to lower costs and prices (in inflation-adjusted terms), chicken consumption has increased substantially, and today consumers buy more chicken than beef.

The Biden Administration has criticized tournaments as both a source and a reflection of processor market power.¹³ In that context, along with other proposals for “reforming” beef and other livestock markets, the Administration has proposed new rules, claiming it will improve the “fairness” of poultry contracts. The USDA intends to implement these proposed rules, which would significantly change the poultry tournament system.

The tournament system provides incentives for growers to minimize mortality rate, maximize feed efficiency, and reduce production costs.

In fact, tournaments are a particular type of risk-sharing arrangement. Because payment is based on performance relative to peers, system-wide risks that affect all growers are shifted to the processor. These include losses due to factors such as weather and widespread diseases. Through the tournaments, integrators are guaranteed access to a reasonable level of production, and growers are guaranteed a minimum level of compensation and a market for their output. They are also guaranteed supplies of some of their inputs, such as feed, at a fixed cost. Thus, the tournament system provides incentives for growers to minimize mortality rate, maximize feed efficiency, and reduce production costs. Moreover, Chuck Knoeber and Walter Thurman found that tournament contracts shifted nearly all feed and product price risks, and most systemic production risks, from producers to processors.¹⁴

A tournament contract exists only for the life of a single contract. Thus, growers do face some risks. For example, an integrator may close a plant and stop accepting broilers. This risk is a significant concern since many growers substantially invest in fixed assets such as chicken houses and production facilities. Another risk is associated with flock placements. Depending on the desired bird size, grow out may take 38–61 days. Once a flock has been shipped for processing, growers must clean and repair facilities and await placement of the next flock. James MacDonald reports an average wait time of 16–17 days for the next flock, although 25 percent of growers reported waiting 20 days or more, reducing their revenues and profits.¹⁵

Changes Proposed by the Biden Administration

Tournaments have been profitable for growers and incentivize technological innovation, but some commenters see them as just another unfair production practice that allows processors to price discriminate against individual growers. The USDA Agricultural Marketing Service has proposed revisions to the Packers and Stockyards Act of 1921 that would fundamentally alter the use of tournaments in poultry production. The proposals would mandate the disclosure of information used by processors in determining the premiums and discounts associated with production differences among growers. Thus, Secretary of Agriculture Thomas Vilsack has claimed that these actions “ultimately will help us give farmers and ranchers a fair shake, strengthen supply chains and make food prices fairer.”¹⁶

¹² Production statistics were taken from James M. MacDonald, “Technology, Organization, and Financial Performance in U.S. Broiler Production,” U.S. Department of Agriculture, Economic Research Service, June 2014, https://www.ers.usda.gov/webdocs/publications/43869/48159_eib126.pdf. James MacDonald quotes statistics from an earlier U.S. Department of Agriculture report. Floyd A. Lasley, “The U.S. Poultry Industry: Changing Economics and Structure,” U.S. Department of Agriculture, Economic Research Service, July 1983, <https://naldc.nal.usda.gov/download/CAT84800258/PDF>.

¹³ Secretary of Agriculture Thomas Vilsack, for example, has stated that the proposed rule “ultimately will help us give farmers and ranchers a fair shake, strengthen supply chains and make food prices fairer.” See Qiu, “Biden Administration Aims to Increase Regulation and Competition in the Poultry Industry.”

¹⁴ Charles R. Knoeber and Walter N. Thurman, “Don’t Count Your Chickens . . . : Risk and Risk Shifting in the Broiler Industry,” *American Journal of Agricultural Economics* 77, no. 3 (August 1995): 486–96.

¹⁵ MacDonald, “Financial Risks and Incomes in Contract Broiler Production.”

¹⁶ Qiu, “Biden Administration Aims to Increase Regulation and Competition in the Poultry Industry.”

The new rules would require integrators to disclose details about how payments are determined for other growers in a tournament group. The rules would also require disclosure of feed use, chick placements, and the detailed ranking of individual growers within their tournament group. Processors would also face a mandate to guarantee a minimum number of chicks and stocking density that they would place with each grower in a year.

When each flock and tournament is settled, a processor would have to provide every grower with a ranking sheet that reveals their exact position relative to every one of their competitors. The sheet would include growers' housing characteristics and the metrics used to generate rankings or scores, including details on the distribution of inputs; the names, sexes, and ratios of specific breeds; and each breeder's facilities, flock ages, and feed disruptions. While growers' names would not be included, the detailed information would enable competitors to identify other growers in most situations.

The rules would also require processors to provide a summary of all bankruptcies and litigation involving the integrator and its growers over the previous 6 years. The processor would also have to provide a statement outlining the policies and procedures that apply when a grower's facilities are either sold or assigned to another processor. Finally, if the 5 year average of gross payments does not accurately reflect a projection of future payments, a processor would have to supply the reasons for the discrepancy to growers.

The required information would essentially make details regarding individual production practices widely known, and such information could be used to affect other aspects of business practices among poultry farmers.

The Administration and others argue that these changes would improve transparency in the tournament system. The required information would essentially make details regarding individual production practices widely known, and such information could be used to affect other aspects of business practices among poultry farmers. For example, a lender would have access to detailed performance information about growers with whom they do not have a business relationship.

The public disclosure of businesses' confidential information has raised a number of concerns regarding unfair business practices. Agri Stats is a firm that collects detailed information from processors and then provides this information anonymously to anyone willing to pay for its service. Extensive litigation has occurred because Agri Stats provides such information, in which it has been alleged that such information could be used to conduct nefarious business practices, paradoxically including the more extensive practice of price discrimination.

To the extent that the tournament system provides effective risk sharing and has motivated improved efficiency and positive technological innovation in the industry, disruptions to the system could hurt growers, consumers, and processors.

Concluding Remarks

The tournament contract system that dominates poultry production has developed in response to the needs and options available to both farmers and processors in the industry. Processors want a consistent supply of high-quality broilers, and the confined nature of poultry production has allowed careful genetic selection and precise production practices to provide that outcome. Despite assertions that poultry farmers are suffering because of the system, poultry farmers enjoy much higher incomes on average than those received by other farm and non-farm households.

The USDA study by MacDonald reported that, in 2011, the average income of households with contract poultry production was twice as large as the average income of U.S. households in general. Contract poultry growers had gross farm incomes that averaged \$233,000, of which 71 percent came from tournament and other production contract fees. The study also noted that most contract growers do not raise any other livestock and that $\frac{1}{3}$ of poultry farmers have no cropland. Further, over $\frac{1}{2}$ of contract growers had no agricultural commodity enterprises (for example, raising corn or managing an apple orchard) beyond their poultry operation. Contract growers also tended to be part-time farmers who devote only 28–40 hours of labor per week to the operation.¹⁷

The Biden Administration's proposed changes may disrupt this system and could lower poultry producers' earnings and incomes. The provision of private business information specific to an operation could result in economic losses if such information were used to discriminate against growers because of characteristics other than their efficiency in producing poultry. If the system changes in ways that lessen rewards for superior performance, poultry products will likely be lower quality, more

¹⁷MacDonald, "Financial Risks and Incomes in Contract Broiler Production."

costly to produce, and, because of those higher costs, more expensive for consumers. Not exactly what the doctor ordered.

About the Author

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SUPPLEMENTARY MATERIAL SUBMITTED BY ROBERT L. LAREW, PRESIDENT, NATIONAL FARMERS UNION

Insert

Mr. VASQUEZ. . . . To any one of our panelists, how can we address the disparity of rural *versus* urban inflation and provide relief and make good policy that helps support rural Americans that live outside of major cities?

Mr. LAREW. It is a good question. I am not sure I have—I would love to follow up as well.

The Consumer Price Index (CPI) does not accurately display a meaningful measurement, and I agree it does not display both urban and rural numbers. When looking to ease rural inflation costs, we need to be talking about the urban-rural inflation gap and look at ways to close it. Factors that contribute to this disparity can be attributed to increased fuel costs, supply chain disruptions, higher input costs, or paying more for healthcare.

The cost of travel must be reflected in CPI calculations for rural areas. Rural Americans must travel longer distances to do business, access essential services, and be a part of their communities. In recent years, supply chain disruptions have made long-distance travel a necessity. Farmers have had to haul crops to elevators that are farther away and oftentimes need to cross multiple counties to buy farm inputs. For essential services such as healthcare, insurance costs are on the rise and with many rural hospitals shutting down it all comes down to having to travel far for access or forgoing treatment altogether.

Congress can look at ways to provide relief in any of these areas. Investing in rural economies to boost resilient and competitive industries can ensure that the uneven effects of inflation do not have an extreme effect on our communities. Investing in biofuels infrastructure helps farmers' bottom line and helps consumers save at the pump. We need to look at how consolidation prevents our supply chains from running smoothly and enact stronger antitrust laws and we should also consider what is driving the cost of inputs for family farmers and ranchers. Last, Congress and the Biden Administration should help existing rural healthcare services that are on the brink of collapse and find ways to bolster our healthcare providers for the years to come.

