

Hogan Lovells Update – USDA Releases Proposed Rule on Tournament System
Appendix 1: Mocked up live poultry dealer disclosure document
June 2, 2022

NOTE: *This sample Dealer Disclosure Document is based on the information provided in AMS’s proposed rule regarding poultry grower contracting and tournaments, pre-released on May 26, 2022. This document is intended for use only as an example of what a disclosure document may look like based on the language provided in the proposed rule, with particular emphasis on showing the information AMS would require and the specific language the proposed rule would require for certain disclosures. This is not intended to be a template for implementation, and any requirements that may be codified in a final rule could differ from what is shown here. Footnotes are included to provide additional comments and do not reflect information that would be required under the proposal.*

LIVE POULTRY DEALER DISCLOSURE DOCUMENT¹
[Cover Page]

1. Live poultry dealer information
 - a. Name
 - b. Type of business organization
 - c. Principal business address
 - d. Telephone number
 - e. Email address
 - f. Primary internet webpage address (if applicable)
2. Length of contract term
3. Minimum number of placements² on the poultry grower’s farm annually under the terms of the growing contract
4. Minimum stocking density³ for each flock to be placed on the poultry grower’s farm under the terms of the contract

[Required Statement] The income from your poultry farm may be significantly affected by the number of flocks the poultry company places on your farm each year, the density or number of birds placed with each flock, and the target weight at which poultry is caught. The poultry company may have full discretion and control over these and other factors. Please carefully review the information in this document.⁴

¹ The proposed rule requires the cover page include this title in capital letters and bold type.

² The proposed rule defines “minimum number of placements” as “the least number of flocks of poultry the live poultry dealer will deliver to the grower for growout annually under the terms of the poultry growing arrangement.”

³ The proposed rule defines “minimum stocking density” as “the ratio that reflects the minimum weight of poultry per facility square foot the live poultry dealer intends to harvest from the grower following each growout.”

⁴ This language is specified verbatim at proposed § 201.100(b)(4).

[Required Statement--include either Statement A or Statement B, below, as appropriate to the contract at issue⁵]

[Statement A] This disclosure document summarizes certain provisions of your poultry growing arrangement and other information. You have the right to read this disclosure document and all accompanying documents carefully. At least seven calendar days before the live poultry dealer executes the poultry growing arrangement, the poultry company is required to provide you with: (1) this disclosure document, and (2) a copy of the poultry growing arrangement.⁶

[Statement B] This disclosure document summarizes certain provisions of your poultry growing arrangement and other information. You have the right to read this disclosure document and all accompanying documents carefully. The live poultry dealer is required to provide this disclosure document to you simultaneously with (a) a copy of the poultry growing arrangement, (b) any new or modified housing specifications that would require you to make an original or additional capital investment, and (c) a letter of intent.⁷

[Required Statement] Even if the poultry growing arrangement contains a confidentiality provision, by law you still retain the right to discuss the terms of the poultry growing arrangement and the Live Poultry Dealer Disclosure Document with a Federal or State agency, your financial advisor or lender, your legal advisor, your accounting services representative, other growers for the same live poultry dealer, and your immediate family or business associates. A business associate is a person not employed by you, but with whom you have a valid business reason for consulting when entering into or operating under a poultry growing arrangement.⁸

[Required Statement] **Note that USDA has not verified the information contained in this document. If this disclosure by the live poultry dealer contains any false or misleading statement or a material omission, a violation of federal and/or state law may have occurred.**⁹

[Disclosures continued on following page]

⁵ The proposed rule indicates that EITHER Statement A or Statement B (but not both) should be used depending on the terms of the contract. A dealer would use Statement A if renewing, revising, or replacing an existing poultry growing contract or establishing a new contract that does not contemplate modifications to existing housing specifications. The dealer would use Statement B if entering a new poultry growing arrangement that will require an original capital investment or if offering or imposing modifications to existing housing specifications that could reasonably require the grower or prospective grower to make additional capital investments.

⁶ This language is specified verbatim at proposed § 201.100(b)(6)(i).

⁷ This language is specified verbatim at proposed § 201.100(b)(6)(ii).

⁸ This language is specified verbatim at proposed § 201.100(b)(7).

⁹ This language is specified verbatim at proposed § 201.100(b)(8) and is required to be in bold.

LIVE POULTRY DEALER DISCLOSURE DOCUMENT

[Disclosure and Signature pages]

1. Litigation

- a. Provide a summary of litigation over the prior six years between the live poultry dealer and any poultry grower; including the nature of the litigation, its location, the initiating party, a brief description of the controversy, and any resolution.

2. Bankruptcy Filings

- a. Provide a summary of all bankruptcy filings in the prior six years by the live poultry dealer and any parent, subsidiary, or related entity of the dealer.

3. Policy Regarding Sale of Grower Facility

- a. Provide a statement that describes the live poultry dealer's policies and procedures regarding the potential sale of the grower's facility or assignment of the poultry growing contract to another party, including the circumstances under which the dealer will offer the successive buyer a poultry growing contract.

4. Financial Disclosures

- a. Table(s): Average annual gross payments to poultry growers, all complexes, previous calendar year.
Provide a table showing average annual gross payments to poultry growers for the previous calendar year for all complexes owned or operated by the live poultry dealer, organized by housing specification, and expressing average payments on the basis of U.S. dollars per farm facility square foot.
- b. Table(s): Average annual gross payments to growers, local complex past 5 years
Provide tables showing average annual gross payments to poultry growers at the local complex for each of the five previous years.¹⁰ The tables should express average payments on the basis of U.S. dollars per farm facility square foot. The tables should be organized by year, housing specification tier (lowest to highest), and quintile (lowest to highest).

Provide the following additional information if relevant:

- c. Table(s): Projected annual gross payments to growers.
If the tables above with average annual gross payments to growers at the local complex for the past 5 years do not provide an accurate representation of projected future payments, provide 1) an explanation for the discrepancy; *and* 2) tables with projections of average annual gross payments to growers for the term of the current contract.

5. Grower Variable Costs

- a. Provide a summary of information the live poultry dealer collects or maintains relating to grower variable costs inherent in poultry production. The proposed rule defines "grower variable costs" to include production-related costs that may fall on the grower, including utilities, fuel, water, labor, repairs and maintenance, and liability insurance.

6. Extension/Advisor Contact Information

¹⁰ The proposed rule provides a detailed process for calculating table values at proposed §.201.100(d)(2)(i).

- a. Provide current contact information for the State university extension service office or the county farm advisor's office that can provide relevant information about poultry grower costs and poultry farm financial management in the poultry grower's geographic area.

7. Live Poultry Dealer Certification

- a. The principal executive officer or officers, or persons performing similar functions, must certify that the live poultry dealer has established, maintains, and enforces a governance framework and that, based on the officer's knowledge, the Dealer Disclosure Document is truthful and complete.

8. Grower Signature

- a. The document must include the grower or prospective grower's dated signature as evidence of receipt.

[Required Statement] If the live poultry dealer does not deliver this disclosure document within the time frame specified herein, or if this disclosure document contains any false or misleading statement or a material omission (including any discrepancy with other oral or written statements made in connection with the poultry growing arrangement), a violation of federal and state law may have occurred. Violations of federal and state laws may be determined to be unfair, unjustly discriminatory, or deceptive and unlawful under the Packers and Stockyards Act, as amended. Allegations of such violations may be reported to the Packers and Stockyards Division of USDA's Agricultural Marketing Service.¹¹

¹¹ This language is specified verbatim at proposed § 201.100(g)(1).