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April 14, 2025

Submitted via regulations.gov

Regulatory Analysis and Development Policy and Program Development Animal and Plant Health Inspection Service U.S. Department of Agriculture Station 2C-10.16 4700 River Road, Unit 25 Riverdale, MD 20737-1238

Re: Supplemental Comments on Payment of Indemnity and Compensation for Highly Pathogenic Avian Influenza Interim Rule (Docket No. APHIS-2023-0088)

Dear Administrator Watson,

The Animal Welfare Institute (AWI) appreciates the opportunity to submit additional comment on the interim rule regarding Payment of Indemnity and Compensation for Highly Pathogenic Avian Influenza ("interim rule") promulgated by the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). Since its founding in 1951, AWI has been dedicated to reducing animal suffering caused by people, and we continually work to improve conditions for the billions of animals raised and slaughtered each year for food in the United States. As such, AWI appreciates the USDA taking some steps to prevent highly pathogenic avian influenza (HPAI) transmission by strengthening auditing protocols. However, an additional measure USDA should enact to help prevent disease spread is to require or incentivize limits on domestic poultry flock sizes and densities.

Under the Animal Health Protection Act (AHPA), APHIS has the authority to implement measures that protect the health and well-being of people and animals against diseases and pests that threaten the U.S. food chain. This includes the implementation and enforcement of rules aimed at preventing, mitigating, and eradicating diseases that impact farmed animals, including poultry. As discussed in the comments below, pursuant to the AHPA, APHIS has the authority to promulgate a rule limiting flock sizes and densities if it determines such an action is necessary to achieve the purposes of AHPA. Alternatively, APHIS could adjust its interim rule to make indemnity and compensation payments contingent upon restocking with smaller flock sizes or lower flock densities. APHIS already conditions indemnity payments on a number of factors, and it would be within its authority to also condition indemnity payments on reduced flock size and density.

Poultry producers with large flock sizes and high stocking densities are at greater risk of contracting and spreading HPAI. The European Union (EU) already limits stocking density, explicitly recognizing the connection between food security, animal welfare, and public health and well-being. Some industry groups have also opted to voluntarily reduce stocking density. APHIS

should build upon this precedent. The ongoing outbreak of HPAI has become one of the greatest animal health and welfare crises of our time. APHIS must continue to take steps that mitigate the current crisis and prevent future ones; therefore, in addition to strengthening auditing protocols, it should adopt measures designed to reduce flock sizes and densities.

I. The AHPA Authorizes APHIS to Reduce or Incentivize Flock Sizes and Densities

In enacting the AHPA, Congress found that "the prevention, detection, control, and eradication of diseases and pests of animals are essential to protect animal health; the health and welfare of the people of the United States; the economic interests of the livestock and related industries of the United States; the environment of the United States; and interstate commerce and foreign commerce of the United States in animals and other articles."¹ Congress further determined that regulation by the Secretary of Agriculture (Secretary) is "necessary" in order to mitigate or eliminate burdens on interstate commerce and "to protect the agriculture, environment, economy, and health and welfare of the people."² Accordingly, the Secretary is authorized to promulgate regulations or issue orders as the Secretary deems necessary to carry out the AHPA.³ The Secretary has delegated the authority under the AHPA to APHIS.⁴

Recognizing that diseases and pests pay no heed to borders, Congress found that all animals and articles regulated under the AHPA "are in or affect interstate commerce."⁵ In general, the Secretary "may carry out operations and measures to detect, control, or eradicate" disease.⁶ More specifically, APHIS has the authority to "hold, seize, quarantine, treat, destroy, dispose of, or take other remedial action" regarding animals that are or will be in interstate commerce and that "may carry, may have carried, or may have been affected with or exposed" to a disease.⁷

In addition, the Secretary can declare an "extraordinary emergency" during which the Secretary holds discretionary power to limit and altogether terminate the spread of the disease.⁸ If necessary to achieve this goal, APHIS may "hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance" and "prohibit or restrict the movement or use within a State…of any animal."⁹ During an emergency, such as the current HPAI crisis, where a State fails to eradicate or take adequate control of a disease, the Secretary can step in and act within the State.¹⁰ Because of its broad authority to "carry out operations and measures" and "apply other remedial actions," APHIS has the ability, as a measure of controlling or eradicating disease, to regulate flock sizes and densities in general, and especially when necessary to prevent or remediate an extraordinary emergency, such as the current HPAI crisis.

- ³ *Id.* § 8315.
- ⁴ 7 C.F.R. § 2.80(a)(37).
- ⁵ 7 U.S.C. § 8301(5)(A).
- ⁶ *Id.* § 8308(a).
- ⁷ *Id.* § 8306(a)(1). ⁸ *Id.* § 8306(b)(1).
- ⁹ Id.

¹ 7 U.S.C. § 8301(1).

² *Id.* § 8301(5)(B)(iii).

¹⁰ Id. § 8306(b)(2).

Though APHIS has authority to impose limits on flock sizes and densities broadly, it should, at a minimum, take steps to incentivize reduced poultry flock sizes and densities during and after a disease outbreak such as HPAI. One way it can do this is by placing conditions on indemnity payments. APHIS may order the owner of an animal or animal facility to "quarantine, dispose of, or take other remedial action" regarding the animal or facility.¹¹ Where the Secretary orders the destruction of an animal or animals, the owner can be compensated at "fair market value, as determined by the Secretary."¹² An owner will not be compensated if the animal or animal facility "has been moved or handled by the owner in violation of an agreement for the control and eradication of diseases or pests."¹³ APHIS has promulgated rules explaining the specific conditions under which USDA will "allow claims arising out of the destruction of poultry or eggs destroyed due to an outbreak of" HPAI.¹⁴

Under these rules, APHIS already conditions indemnity payments on measures that are meant to prevent, detect, control, or eradicate disease. For example, the owner must have a USDA-approved biosecurity plan in order to qualify for compensation.¹⁵ The owner must also have been following the biosecurity plan at the time that HPAI was first detected, which means the plan must have been in place prior to the outbreak.¹⁶ If APHIS were to condition indemnity payments on compliance with flock size and density limitations, it would be following the same approach it uses in requiring a biosecurity plan. Under this approach, APHIS would not need to directly mandate that poultry producers limit stocking density; rather, if poultry producers wanted to qualify for indemnity payments, they would need to follow stocking density limits prior to an outbreak or prior to restocking.

As noted above, APHIS "may carry out operations and measures to detect, control, or eradicate" a disease.¹⁷ APHIS facilitates the National Animal Disease Preparedness and Response Program ("Preparedness and Response Program") to "address the increasing risk of the introduction and spread...of animal pests and diseases affecting the economic interests of the livestock and related industries."¹⁸ According to the Preparedness and Response Program's website, it "strengthens [the] country's ability to combat animal disease outbreaks."¹⁹ The Preparedness and Response Program includes, among other things, activities such as "[e]nhancing animal pest and disease analysis and surveillance," "[i]mproving biosecurity," and "[e]nhancing emergency preparedness and response capabilities."²⁰ Also, APHIS may conduct "other activities as determined appropriate by the Secretary" to prepare for and respond to disease outbreaks.²¹ In reducing or incentivizing flock sizes and densities, APHIS would likewise be taking necessary actions to remediate the current HPAI crisis and prepare for future disease outbreaks.

- ¹⁴ 9 C.F.R. § 53.10(g).
- ¹⁵ *Id.* § 53.10(g)(1)(i); *see also* § 53.11(e).
- ¹⁶ Id.
- ¹⁷ 7 U.S.C § 8308(a).
- ¹⁸ *Id.* § 8308a(b).

²¹ *Id.* § 8308a(b)(2)(I).

¹¹ *Id.* § 8306(c)(1).

¹² *Id.* § 8306(d)(2)(A).

¹³ *Id.* § 8306(d)(3).

¹⁹ National Animal Disease Preparedness and Response Program, ANIMAL PLANT HEALTH INSPECTION SERV., https://www.aphis.usda.gov/funding/nadprp (last modified Nov. 26, 2024).

²⁰ 7 U.S.C § 8308a(b)(2)(A), (E), (F).

II. Limits on Sizes and Densities Would Reduce Disease Spread

The U.S. differs from most other countries in that it has extremely large flocks. While specific numbers are rarely made publicly available, the National Agricultural Statistics Service's Census on Agriculture indicates that, in 2022, there were 7,406 farms that sold 500,000 or more broilers and 834 farms that sold 100,000 or more turkeys.²² There were 347 commercial egg farms housing 100,000 or more hens at one time. Data from the current outbreak indicates that many HPAI-affected egg farms housed over a million hens in one location – some operations had over 5 million hens – with individual barns at times containing upwards of 400,000 birds.²³

AWI's review of the available data suggests that larger operations are at greater risk of contracting HPAI and, once infected, they are almost never able to depopulate in the time period established by APHIS policy (24-48 hours) to curtail further spread.²⁴ For example, on operations confining a million or more hens, the average time between diagnosis and depopulation is 9.54 days, with a range of 3 to 22 days.²⁵ Research on infectious diseases suggests that larger farm sizes "have the potential to facilitate larger livestock epidemics."²⁶ Specifically with regard to HPAI, research (both in the U.S. and internationally) suggests that the probability of becoming infected with HPAI is higher for larger flocks.²⁷

The currently circulating HPAI virus was not instigated by wild birds; rather, it is a mutation of a low path avian influenza (LPAI) virus that became highly pathogenic via a conversion event on a commercial goose farm in 1996.²⁸ Over the past 65 years, such conversions have been documented 39 times—37 of which occurred in commercial poultry production systems,

https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf. ²³ U.S. DEP'T OF AGRIC. ANIMAL PLANT HEALTH INSPECTION SERV., 2022–2023 Highly Pathogenic Avian Influenza Outbreak: Summary of Depopulation Methods and the Impact on Lateral Spread, 13, Table 2, (on file with APHIS); Confirmations of Highly Pathogenic Avian Influenza in Commercial and Backyard Flocks, U.S. DEP'T AGRIC., ANIMAL AND PLANT HEALTH INSPECTION SERV., https://www.aphis.usda.gov/livestock-poultry-disease/avian/avianinfluenza/hpai-detections/commercial-backyard-flocks (last visited Apr. 11, 2025) (scrolling down to "HPAI 2022/2023 Confirmed Detections" and viewing the "List of Detections by Day" section).

²⁴ Gwendy Reyes-Illg & Zack Strong, Animal Welfare Institute, Comment Letter on Potential Research Priorities to Inform Readiness and Response to Highly Pathogenic Avian Influenza A (H5N1), 11-20 (Oct. 22, 2024), https://awionline.org/sites/default/files/uploads/documents/Comments-to-National-Academies-of-Sciences-on-HPAI-Research-Priorities.pdf.

²² U.S. DEP'T OF AGRIC. NAT'L AGRIC. STAT. SERV., 2022 Census of Agriculture, United States Summary and State Data, 1 GEOGRAPHIC AREA SERIES, Part 51 (Feb. 2024),

²⁵ *Id.* at 18-19.

²⁶ A.J. Meadows et al., *Disentangling the Influence of Livestock vs. Farm Density on Livestock Disease Epidemics*. 9(7) ECOSPHERE (2018).

²⁷ Y. Zhao et al., Airborne Transmission May Have Played a Role in the Spread of 2015 Highly Pathogenic Avian Influenza Outbreaks in the United States, 9(1), SCI. REP. 11755 (2019); X. D. Nguyen et al, Modeling Long-Distance Airborne Transmission of Highly Pathogenic Avian Influenza Carried by Dust Particles, 13(1) SCI. REP. 16255 (2023); https://doi.org/10.1038/s41598-023-42897-2; A. Mannelli, N. Ferrè, & S. Marangon, Analysis of the 1999–2000 Highly Pathogenic Avian Influenza (H7N1) Epidemic in the Main Poultry-Production Area in Northern Italy, 73(4) PREVENTIVE VETERINARY MED. 273 (2006); J.H. Leibler et al., Industrial Food Animal Production and Global Health Risks: Exploring the Ecosystems and Economics of Avian Influenza, 6(1) ECOHEALTH 58 (2009); M. E. Thomas et al., Risk Factors for the Introduction of High Pathogenicity Avian Influenza Virus Into Poultry Farms During the Epidemic in the Netherlands in 2003, 69(1) PREVENTIVE VETERINARY MED. (2005).

²⁸ Madhur S. Dhingra et al., *Geographical and Historical Patterns in the Emergences of Novel Highly Pathogenic* Avian Influenza (HPAI) H5 and H7 Viruses in Poultry. 5(84) FRONTIERS VETERINARY SCI. (2018).

typically on poultry farms located within high poultry density areas.²⁹ It is likely that intensive poultry rearing conditions increase the odds of LPAI-to-HPAI conversion events because of the high contact rates and low genetic diversity of flocks, factors which may enable widespread transmission of even the most virulent mutants.^{30,31}

Multiple scientific expert panels convened by international agencies have recommended reducing poultry farm sizes as a strategy for curbing HPAI. For example, in 2023, the One Health High-Level Expert Panel (OHHLEP), a scientific and strategic advisory group for the World Health Organization (WHO), the World Organization for Animal Health (WOAH), the Food and Agriculture Organization of the United Nations (FAO), and the United Nations Environment Program (UNEP), released a report asserting that "there has been a huge body of work on the early detection and response to emerging disease outbreaks following spillover of animal viruses to humans, but far less focus on primary prevention. Primary prevention starts before the first cases of human illness occur."³² Further, OHHLEP found that HPAI H5N1 viruses "evolved in poultry farming" and, consequently, suggests "reducing poultry farm sizes and stocking densities."³³

In July 2023, a statement with a similar recommendation was released by the Scientific Task Force on Avian Influenza and Wild Birds ("Task Force").³⁴ The Task Force was co-convened by the Convention on the Conservation of Migratory Species of Wild Animals (CMS) and FAO, and includes representatives from WOAH, FAO, WHO and the Royal Veterinary College, among other organizations.³⁵ The Task Force aims to "bring together the best scientific advice on the conservation impact of the spread of avian influenza… issue advice on the root causes of the epidemic…[and] technically sound measures to combat it and to develop early warning systems."³⁶ In this vein, it found that "reassessment of the nature and sustainability of poultry production systems is required," and recommended several reforms to poultry production systems.³⁷ It noted that "HPAI risks are high where [poultry] production occurs in high-density settings,"³⁸ and stated that, at a "minimum, improved standards of hygiene and a reduction of the density of commercial poultry farms is recommended," especially in "densely populated poultry

²⁹ Id

 $^{^{30}}$ Id.

³¹ M. Gilbert, X. Xiao, & T. P. Robinson, (2017). Intensifying Poultry Production Systems and the Emergence of Avian Influenza in China: A 'One Health/Ecohealth' Epitome. 75 ARCHIVE PUB. HEALTH (2017).

³² Marion P. G. Koopmans et al., *The Panzootic Spread of Highly Pathogenic Avian Influenza H5N1 Sublineage* 2.3.4.4b: A Critical Appraisal of One Health Preparedness and Prevention, ONE HEALTH HIGH-LEVEL EXPERT PANEL (2023), https://cdn.who.int/media/docs/default-source/one-health/ohhlep/the-panzootic-spread-of-highly-pathogenic-avian-influenza.pdf?sfvrsn=205b68bd_16&download=true.

 $^{^{1}}_{33}$ *Id.* at 9.

³⁴ Scientific Task Force on Avian Influenza and Wild Birds Statement on: H5N1 High Pathogenicity Avian Influenza in Wild Birds - Unprecedented Conservation Impacts and Urgent Needs, CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS & THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (Jul. 2023), https://www.cms.int/sites/default/files/publication/avian_influenza_2023_aug.pdf [hereinafter Task Force Statement]

³⁵ Id.

³⁶ Scientific Task Force on Avian Influenza and Wild Birds, Convention on the Conservation of Migratory Species of Wild Animals, https://www.cms.int/en/workinggroup/scientific-task-force-avian-influenza-and-wild-birds (last updated Jul. 12, 2023).

³⁷ *Task Force Statement, supra* note 34, at 3.

³⁸ Id.

areas."³⁹ Further, the Task Force found that "growth and intensification of the poultry sector has been associated with [an] increase in HPAI pandemics."⁴⁰ Numerous peer-reviewed research studies supports this conclusion.⁴¹

While the U.S. is not party to CMS, it does engage with CMS via the Association for Fish and Wildlife Agencies (AFWA), a group of state, provincial, and territorial fish and wildlife agencies in North America.⁴² AFWA supported the content of both of the Task Force's statement and recommended changes to neither the language related to flock size and density, nor the impacts of intensive farming.⁴³ Further, this research by the Task Force is informative regardless of whether the U.S. is a party to CMS. It illuminates the importance of reduced flock sizes and densities to preventing disease outbreaks, providing clear evidence in support of APHIS amending the interim rule to include flock size and density as a qualifier for payments of indemnity and compensation for HPAI.

III. Government and Industry Precedent for Implementing these Measures

Reducing flock sizes and densities is a practical approach to preventing and mitigating disease outbreak; in fact, other countries and even select industry groups already do so. To safeguard food security, public health, and animal welfare, the European Union ("EU") has regulated flock density since the 1990s. More recently, since 2020, major poultry producers from the U.S. and Europe committed to reducing flock density to improve poultry welfare. Though the EU and industry groups have not implemented caps on flock size per se, lower densities have a similar effect by limiting the number of birds in any one facility. By regulating flock sizes and densities in the U.S., APHIS would build and improve upon international momentum to prepare for and prevent disease outbreaks.

The Council of the EU ("EU Council") issued two directives in 1999 and 2007, setting a maximum stocking density for laying hens and broiler chickens, respectively.⁴⁴ For laying hens, EU Member States must ensure that stocking density shall "not exceed nine laying hens per m² usable area."⁴⁵ For broiler chickens, they must "ensure that the maximum stocking density in a holding or a house of a holding does not at any time exceed 33 kg/m²."⁴⁶ In both directives, the EU Council recognizes that its rules protecting laying hens and broiler chickens must "balance" animal welfare, health,

³⁹ *Id.* at 13.

⁴⁰ *Id.* at 22.; *See also* Madhur S. Dhingra et al., *supra* note 28.

⁴¹ See, e.g., Madhur S. Dhingra et al., *supra* note 28; J. L. Mace & A. Knight, *Influenza Risks Arising from Mixed Intensive Pig and Poultry Farms, with a Spotlight on the United Kingdom*, 10 FRONTIERS VETERINARY SCI. (2023); Susanne Kessler et al., *Influenza A Viruses and Zoonotic Events-Are We Creating Our Own Reservoirs?*, 13(11) NAT'L LIBR. MED. VIRUSES 2250 (2021).

⁴² International Relations Committee Briefing Paper: Convention on Migratory Species 14th Conference of the Parties: Draft Recommendations, ASS'N FISH WILDLIFE AGENCIES 2 (2024),

https://www.fishwildlife.org/application/files/6517/0431/0201/AFWA_IR_Committee_CMS_briefing_paper_2024. pdf.

 $^{^{\}hat{4}3}$ *Id.* at 2, 4.

⁴⁴ See Council Directive 1999/74, art. 4, 1999 O.J. (L 203) 53, 54 (EC) [hereinafter "Laying Hen Directive"]; Council Directive 2007/43, art. 3, 2007 O.J. (L 182) 19, 21 (EC) [hereinafter "Broiler Chicken Directive"]. A directive is a "legislative act that sets out a goal that EU countries must achieve." Types of Legislation, EURO. UNION, https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en. EU countries, however, can "devise their own laws on how to reach these goals." *Id*.

⁴⁵ Laying Hen Directive, *supra* note 44, at 54.

⁴⁶ Broiler Chicken Directive, *supra* note 44, at 21.

economic and social considerations, and environmental impact.⁴⁷ The European Food Safety Authority ("EFSA"), an EU agency providing scientific expertise on current and emerging food-related risks, highlights these directives as part of the EU framework for protecting the EU food chain and improving animal welfare—two inextricably linked goals.⁴⁸ EFSA maintains that "[t]he safety of the food chain is directly connected to the welfare of animals, particularly those farmed for food production, due to the close links between animal welfare, animal health and food-borne diseases."⁴⁹ Space and crowding, according to EFSA, constitute an important factor in animal welfare; consequently, a critical variable in farmed animal disease susceptibility.⁵⁰

A number of major poultry producers in the UK, EU and U.S. have chosen to improve upon the EU's flock density regulations, either by standalone company policy or by way of signing onto the Better Chicken Commitment (BCC). BCC is a "science-based chicken welfare policy that addresses issues related to breeding for fast-growth and high-yield, housing, stocking density, and slaughter."⁵¹ In 2023, Co-op Group committed to reducing poultry stocking densities as part of its animal welfare policy and did so by the end of 2024, limiting stocking density to 27.5 kg/m² for free-range chickens.⁵² Marks & Spencer (M&S) raises 100 percent of its "fresh chicken"—which constitutes 41.84% of its total chicken supply—at a "a maximum of 30 kg/m² or lower."⁵³ In doing so, M&S fulfills part of its commitment under the BCC.⁵⁴ In 2019, Waitrose also signed onto the BCC and already claims to be raising its "fresh and frozen...chicken including ingredients" at or below 30 kg/m², which is better that the required stocking density limit.⁵⁵ Major U.S. restaurants, retailers, and food service operations have also signed onto the BCC, committing to purchasing poultry from producers that "maintain a maximum stocking density of 6.0 lbs./sq. foot and prohibit all forms of broiler cages."56 Notably, major U.S. poultry producers have not yet signed onto the BCC, although some have adopted policies outside of the BCC. For example, since 2015, Perdue Farms has raised more of its poultry "at less than 6.0 or 6.5 pounds per square foot density."⁵⁷ Tyson Foods also claims to "carefully calculate [flock density] to ensure that all birds can easily move to access feed and water, express normal behavior and comply with industry accepted

https://corporate.marksandspencer.com/sites/marksandspencer/files/08-

2024/M%26S_Animal_Welfare_Performance_Summary_2024%20v5.pdf.

⁴⁷ *Id.* at 20; Laying Hen Directive, *supra* note 44, at 553.

⁴⁸ Animal Welfare, EUR. FOOD SAFETY AUTH. (Sept. 14, 2023), https://www.efsa.europa.eu/en/topics/topic/animal-welfare.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ BETTER CHICKEN COMMITMENT, https://betterchickencommitment.com/us/ (last visited Apr. 11, 2025); *See also* THE POLICY, BETTER CHICKEN COMMITMENT, <u>https://betterchickencommitment.com/us/policy/</u> (last visited Apr. 11, 2025) [hereinafter BETTER CHICKEN COMMITMENT POLICY].

⁵² CO-OP, CO-OP ANIMAL WELFARE STANDARDS & PERFORMANCE AND ANTIBIOTICS REPORT 7, 17 (Jan. 2025), available at https://www.coop.co.uk/our-suppliers/animal-welfare.

⁵³ M&S FOOD, M&S ANIMAL WELFARE PERFORMANCE SUMMARY 2024 16 (2024),

⁵⁴ COMPASSION IN WORLD FARMING, M&S LEADS THE WAY ON HIGHER WELFARE CHICKEN IN UK 3 (2023), https://www.compassioninfoodbusiness.com/media/7456355/ciwf-ms-casestudy_final.pdf.

 ⁵⁵ WAITROSE & PARTNERS, OUR ANIMAL WELFARE POLICY AND LIVESTOCK & FARMED FISH KPIS 40 (2024), <u>https://www.johnlewispartnership.co.uk/content/dam/cws/pdfs/Juniper/ethics-and-sustainability/Our-Approach-to-Animal-Welfare-and-Livestock-KPIs.pdf</u>.
⁵⁶ BETTER CHICKEN COMMITMENT POLICY, *supra* note 51. For a list of U.S. companies that have signed onto the

⁵⁶ BETTER CHICKEN COMMITMENT POLICY, *supra* note 51. For a list of U.S. companies that have signed onto the BCC, *see* WELFARE COMMITMENTS, BETTER CHICKEN COMMITMENT, available at https://welfarecommitments.com/broiler/.

⁵⁷ COMMITMENT TO ANIMAL CARE 2024 REPORT: CREATING A CULTURE OF ANIMAL CARE 28, PERDUE FARMS (2024), https://corporate.perduefarms.com/pdfs/animal_care_report.pdf.

standards."⁵⁸ While an important step in the right direction, BCC commitments only apply to broiler poultry and, most concerningly, all of these commitments are self-imposed and unenforceable. This is where APHIS should step in. Pursuant to its authority under AHPA, APHIS should improve upon industry's willingness to reduce flock density by promulgating rules that reduce or incentivize flock sizes and densities for all poultry in the U.S., starting with an amendment to the interim rule.

IV. Conclusion

Under the AHPA, Congress provided APHIS with broad power to prevent, detect, control, and eradicate disease. Congress enacted the AHPA, in large part, because it found that the prevention of disease is necessary to not only protect animal health, but also public health, economic interests, the environment, and interstate commerce. APHIS is already acting on this authority by strengthening auditing protocols, but it must take additional steps—not only to mitigate the current HPAI crisis, but also to prevent future disease outbreaks. Human physical and psychological health and welfare have already been impacted by HPAI and by the need to carry out massive poultry depopulations, particularly when low-welfare methods are used.⁵⁹ The potential impact of HPAI on public health is so great, prioritizing prevention is the only rational approach. APHIS has the authority to promulgate rules reducing flock sizes and densities, and it should start by amending the interim rule to include flock size and density as a qualifier for payments of indemnity and compensation for HPAI.

Thank you for your consideration and please do not hesitate to reach out if you have any questions or concerns, or if you require access to any of the references cited herein.

Sincerely,

Adrienne Craig Staff Attorney and Senior Policy Associate

Rita Flanagan Legal Intern

Farmed Animal Program Animal Welfare Institute

⁵⁸ Animal Welfare in the Supply Chain, TYSON FOODS, <u>https://www.tysonfoods.com/sustainability/product-responsibility/animal-health-welfare/animal-welfare-in-the-value-chain</u>.

⁵⁹ M. Baldwin, *Ventilation Shutdown and VSD+*. *Presentation to US Animal Health Association Committee on Animal Welfare* (Oct. 11, 2022), https://usaha.org/upload/Committee/2022Reports/2022_Animal_Welfare.docx.