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**Re: Docket No. APHIS–2023–0088: Payment of Indemnity and Compensation for Highly Pathogenic Avian Influenza**

Dr. Sevilla –

The National Chicken Council (NCC) appreciates the opportunity to comment on the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS or the Agency) Interim Final Rule (IFR) “Payment of Indemnity and Compensation for Highly Pathogenic Avian Influenza.” NCC is the national, non-profit trade association that represents vertically integrated companies that produce and process more than 95 percent of the chicken marketed in the United States. Our members have been significantly impacted by this IFR since its publication on December 31, 2024, and we urge the Agency to consider delaying further implementation to make the necessary updates to the audit tool, provide additional education for auditors to encourage a level playing field, and to reconsider how the results of this audit are linked to indemnification.

We understand and agree that an audit needs to be performed before birds are introduced in an active control area and/or reintroduced on a premise that has been previously infected with highly pathogenic avian influenza (HPAI). As was clearly outlined in the IFR, one of the main reasons for revising the conditions for indemnification and subsequent auditing procedures was because of those premises that have reintroductions of HPAI on premises previously infected with HPAI.<sup>1</sup> We support the Agency’s focusing on those premises to fully understand why those reintroductions occurred, to improve the biosecurity programs on those premises, and to prevent future infections. However, the scope of the IFR is far beyond that of reinfected premises and even the emphasis on premises in close proximity to an infected premise is misapplied. The outcomes of the IFR since its publication on December 31, 2024, clearly demonstrate the need to revise and refocus the scope and intent of the IFR and corresponding audit.

Given that this new Biosecurity Compliance Audit Program (BCAP) now serves as a condition for receiving indemnity, it is imperative that the process of reviewing and finalizing the

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<sup>1</sup> 89 Fed. Reg. 106981, 106981 (Dec. 31, 2024).

parameters of audit be performed in a meaningful and implementable manner. Indemnification is one of the best tools APHIS has at its disposal to aid in the control of HPAI, and the indemnification program has been largely successful to date. It is unfortunate, however, that the Biden Administration rushed this IFR without providing appropriate opportunity for the affected industry to provide meaningful – and indeed useful – feedback. Implementation of the IFR has already posed significant and unnecessary financial burdens on the broiler chicken industry, and the inconsistency in application of the audit continues to create a competitive disadvantage to some NCC's member companies. As such, we respectfully request that the Agency engage with industry on how to best move this audit program forward in a productive and meaningful manner that will result in improved biosecurity and fewer HPAI cases.

Further, we encourage the Agency to redirect much of the resources made available to implement this IFR to the sectors of the poultry industry that have been most impacted during this outbreak. Broiler chickens represent just over eight percent of the total number of birds impacted during the current outbreak.<sup>2</sup> As outlined in Secretary Rollins' comprehensive strategy to curb HPAI, focusing on improved biosecurity measures and Wildlife Biosecurity Assessments is one of the keys to the success of her plan.<sup>3</sup> We support Secretary Rollins' effort to combat HPAI, and we encourage APHIS to work with industry to help in supporting this comprehensive strategy.

In March 2024, NCC submitted extensive comments to the Agency with the hopes that industry feedback would be helpful in the success of the audit (see Appendix A). Unfortunately, industry's input was largely ignored, which we believe has led to significant challenges in implementing the audit program, to the detriment of broiler companies and hard-working chicken farmers. Overarching comments NCC submitted to APHIS in March 2024 included the following – most of which still remain relevant today:

- This should be a risk-based audit.
- Implementation, intended use, and impacts of noncompliance need to be clearly defined.
- Beta testing of the audit is critical for its success. We encourage the Agency to provide the industry with ample time to make sure that this audit meets the intent and is not overly burdensome to industry and/or the auditor.
- As it is written today, the length and scope of the audit is unworkable.
- We are uncertain if the audit requires 100% compliance to pass.
- How will APHIS link the results of this audit to indemnification and how will this be communicated?
- Who will serve as auditors and what familiarity will they have with the industry and the audit tool itself? How will these individuals be trained?
- Throughout, the audit should provide instructions to the auditor on how to audit each point.
- Only parameters directly linked to biosecurity should be included in the audit.
- There are significant differences among various raising practices and specific facilities for broilers, turkeys, and layers, which should be recognized in the audit.

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<sup>2</sup> [Confirmations of Highly Pathogenic Avian Influenza in Commercial and Backyard Flocks | Animal and Plant Health Inspection Service](#)

<sup>3</sup> [USDA Invests Up To \\$1 Billion to Combat Avian Flu and Reduce Egg Prices | Home](#)

Below we highlight several areas of concern, and we encourage the Agency to consider these comments moving forward.

### 1. Unworkable Implementation Timeline

A draft of the Agency's biosecurity audit tool was initially discussed with industry on December 19, 2023, during a monthly stakeholder call. It was not until January 16, 2024, that the draft audit was shared with industry for feedback. Industry was provided with 24 days to review and provide proposed edits on a 22-page document that it had never seen before. Poultry industry representatives met with APHIS on February 6, 2024, expressing significant concern with the rushed timeline and sharing a myriad of questions and concerns with the audit tool itself. After receiving this feedback from industry, on February 23, 2024, APHIS indicated that it would be accepting feedback until March 1, 2024.

Beta testing an audit is a key component to the success of an audit. To the best of our knowledge, the audit was only beta tested a few times and only once on a broiler farm. Trained auditors should evaluate an audit to confirm that the audit is implementable, the audit parameters are clear and concise, and that the scope of the audit is appropriate. We do not believe that adequate time was spent ensuring that all three of those criteria were met.

Further, when the IFR was published on December 31, 2024, it contained a link to the "DRAFT" Buffer Zone Placements and Restocking of Previously Infected Premises Biosecurity Audit Tool. It was not until several days later that the final audit was made publicly available. A broiler company was in the middle of attempting to restock a premise and both the publication of the IFR (effective immediately) and the lack of a final audit and trained auditors disrupted placement and impacted continuity of business.

### 2. Lack of Trained Auditors

When the IFR was published, there were an inadequate number of APHIS employees who were trained to use the audit. Even some of the auditors that have been trained to date have no prior auditing experience or minimal familiarity with the poultry industry. This has continued to be an issue – one which was evident in a recent audit where a trained APHIS auditor came to audit a previously-infected premise. After crossing the perimeter buffer area (PBA) to begin the audit, the auditor realized they forgot something outside the established perimeter. The auditor walked out of the PBA to get that item from their truck and walked right back across the PBA onto the previously infected site without hesitation. It is also our understanding that this particular auditor has been training other auditors which further underscores industry's concerns. There are many more examples that demonstrate the need for improvement in the training of auditors on how to perform an audit as well as the parameters of the audit tool itself.

### 3. Scope of the Audit

We believe that the scope of the audit is far beyond what would help improve the industry's biosecurity programs and the implementation of those programs. Further, given the differences across the poultry sector, a one-size-fits-all approach negatively impacts the success of the audit tool itself.

The current audit tool is repetitive, subjective, and lengthy. Audit points should be focused on items that are truly related to biosecurity and keeping the virus from entering our broiler houses. All criteria in the audit are considered equal even though many of the parameters are much more impactful at controlling HPAI than others. This audit is also pass-fail, meaning that if the auditor finds only one deviation, it is a failed audit. Given the inconsistencies with applying the audit to date and the various interpretations of the audit points by auditors, this inconsistent application has created a competitive disadvantage to some NCC member companies. Not all farms are the same, yet this audit assumes that each farm is designed, maintained, and managed the same. The risk of viral spread is different from farm to farm, and we do not believe that implementation of this cookie cutter approach will ultimately impact the spread of HPAI.

One of the main areas that we believe should be reconsidered is the requirement to have biosecurity signs on every door even if the door is never used. Having a sign at the Line of Separation (LOS) or the entry door to the ante room is appropriate. However, having signs posted on emergency exit doors that are only opened from the inside of the barn will not prevent the spread of HPAI. We provided many more examples in our previous comments (Appendix A) and would appreciate the opportunity to engage with the Agency to discuss these and other items that have come to our attention since publication of the IFR.

#### 4. Better use of Agency Resources

As previously mentioned, we believe that auditing premises impacted by HPAI prior to placement of birds is important. We also support Secretary Rollins' comprehensive strategy to reduce the spread of HPAI, which includes "gold star biosecurity." However, many of the premises that have been audited to date are of very low risk and efforts should be spent on those premises that have had multiple infections and/or are in high-risk areas. The resources needed to implement this IRF are significant, and which come on top of the additional resources needed to better understand how this virus spreads and affects animals. We believe that aligning the IFR with the current Administration's priorities would provide the necessary resources needed to support this research.

### **Conclusion**

The broiler industry is committed to working with the Agency to eradicate HPAI from the United States. Further, we want the audit to be successful for both industry and APHIS alike. However, many questions and concerns remain. Because of the rushed implementation timeline, we believe that the audit has put an unnecessary burden on industry, has caused disruptions in continuity of business, and conveyed a competitive advantage/disadvantage to some companies depending on the auditor. Some companies have been forced by APHIS to revise parameters of their existing biosecurity programs, which we believe is outside the scope of the IFR and which will not aid in the eradication of HPAI from the United States. Finally, there are some parameters in the audit that are outside of the grower and/or company's control, which we believe should be revisited. To align with the current Administration's priorities, we believe that the intent of this IFR should be revisited, and we stand committed to aid in this process.

We would appreciate the opportunity to visit with you and your team further on how to make this a successful endeavor for APHIS, the industry, and for the health and welfare of our birds. Now that the audit has been in place for almost four months, we believe industry's feedback would be helpful to appropriately manage the Agency's resources.

Thank you for your consideration, and please do not hesitate to contact us with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ashley B. Peterson". The signature is fluid and cursive, with the first name "Ashley" being more prominent.

Ashley B. Peterson, Ph.D.  
Senior Vice President, Scientific and Regulatory Affairs  
National Chicken Council

cc: Dr. Michael Watson  
Administrator  
USDA-APHIS

Dr. Rosemary Sifford  
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USDA-APHIS

## Appendix A

### NCC comments to APHIS regarding the Biosecurity Audit Tool

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**Re: NCC Comments on USDA-APHIS HPAI Response Buffer Zone Placements and Restocking of Previously Infected Premises Biosecurity Audit Tool**

Dr. Sevilla –

The National Chicken Council (NCC) appreciates the opportunity to comment on the Agency's draft "Buffer Zone Placements and Restocking of Previously Infected Premises Biosecurity Audit Tool." NCC is the national, non-profit trade association that represents vertically integrated companies that produce and process more than 95 percent of the chicken marketed in the United States. We understand and agree that an audit needs to be performed before birds are introduced in an active control area and/or reintroduced on a premise that has been previously infected with highly pathogenic avian influenza (HPAI). However, given that this audit will serve as a "condition for receiving indemnity," it is imperative that the process of reviewing and finalizing the parameters of audit be performed in a meaningful manner. Indemnification is one of the keys to the Agency's continued success at controlling HPAI. It is unfortunate, however, that this process has been rushed and not conducted through the normal rulemaking process allowing ample time for stakeholder feedback on such a critical topic. Given the impact of the audit and the fact that the results may have significant impacts on the entire poultry sector, we respectfully request that we are given more time to provide constructive feedback.

In the limited amount of time we were provided to review the audit, we provide the following suggestions and encourage continued dialog on these items as well as the additional recommendations submitted by other industry groups also subject to the audit tool. Some of our overarching comments include the following:

- This should be a risk-based audit.
- Implementation, intended use, and impacts of noncompliance need to be clearly defined.
- Beta testing of the audit is critical for its success. We encourage the Agency to provide the industry with ample time to make sure that this audit meets the intent and is not overly burdensome to industry and/or the auditor.
- As it is written today, the length and scope of the audit is unworkable.
- We are uncertain if the audit requires 100% compliance to pass.
- How will APHIS link the results of this audit to indemnification and how will this be communicated?
- Who will serve as auditors and what familiarity will they have with the industry and the audit tool itself? How will these individuals be trained?
- Throughout, the audit should provide instructions to the auditor on how to audit each point.
- Only parameters directly linked to biosecurity should be included in the audit.
- There are significant differences among various raising practices and specific facilities for broilers, turkeys, and layers which should be recognized in the audit.

We also performed a point-by-point evaluation of the audit and would like to provide the following feedback for each audit point as applicable:

- Logbooks and training (#1/#2)
  - The tool is written as if each farm has its own specific plans and biosecurity records which may not be the case and will put an undue burden on each grower across the United States.
  - APHIS should not expect every individual grower to have detailed policies and training records on their farm.
  - The Agency should, instead, rely on the company's biosecurity plan, documented training records, etc.
  - These records are typically not kept on individual farms but rather at the integrator's office and should be accessible to the auditor.
- Regarding visitor logbooks (#3)
  - Why is arrival and departure time required?
  - What if one entry is missing in the logbook?
  - How is APHIS defining a "visitor?" Company employees such as flock supervisors and/or service techs (including equipment company representatives) who service these farms on an ongoing basis should not be considered visitors. These individuals may visit several farms in a day and are expected to comply with the company's written biosecurity program. It is impossible for these individuals to have 48 hours between each farm visit.
  - Most service techs do not have electronic records but written service reports.
  - Consider requiring the intent of the visit to be logged.
- Visitors crossing LOS (#4)
  - Agree that intent of visit should be recorded, however, same concerns as in #3 regarding flock supervisors/service techs/equipment company representatives.
- Personal protective equipment (PPE, #5)
  - How does the Agency define PPE?
  - Barn specific footwear/clothing is unworkable. Some premises have 24+ houses so they would be required to have 24+ boots and 24+ coveralls.
  - On a broiler breeder farm, the house and the workroom are attached to each other. Would two separate boots and coveralls be required in this circumstance?
  - Would it be more reasonable to require specific PPE for the premise and not by house still recognizing the location of the LOS?
- Feed and water consumption (#7)
  - What does this parameter have to do with biosecurity practices?
  - Not all houses have the ability to measure feed and water consumption directly.
  - What happens if there is an unexplainable decrease in water consumption at 14 days of age but at 15 days of age water consumption is back within normal ranges?
  - "each flock since placement in the poultry house." Does this mean the current flock and not previous flocks? The same language is used in 7, 8, and 9.
- Records of daily egg production and/or mortality (#8/#9)
  - While this information may be recorded and may serve as a tool to detect various diseases, what does this have to do with ensuring biosecurity practices are followed?
- Elevated mortality/morbidity (#10a)
  - How is "elevated" defined by APHIS? How does APHIS define "above expected levels?"
- Buffer zone placement (#11)
  - Does this include day old chicks? How is industry to "hold" day old chicks until results are received?
  - Is the permit received from the state for bird movement to a farm adequate to meet the intent of this audit point?
- Posting of signs (#13)
  - Signs are posted at the front entrance (farm lane) of every premise but not on each individual building on the premise. Existing signage should be adequate.
  - Is the intent that signs are on all buildings or just at the entrance to poultry houses? The audit parameter states both.

- Locks (#14)
  - This is not a common practice and would be burdensome on the grower and their employees.
- Wildlife exclusion methods (#15)
  - Most broiler houses consist of solid side walls.
- Vacant buildings (#20)
  - Are manure sheds, litter storage sheds, and other similar sheds considered vacant because they do not house poultry? These buildings may use bait stations and other deterrents but are not enclosed to “prevent access to wildlife.”
- Restocking (#21)
  - There are some circumstances that cannot be controlled such as vultures roosting in nearby trees. Should this audit point focus on areas that can be controlled or influenced?
- Clean vehicles (#22)
  - Does the “note” section include vehicles that deliver bedding/litter to the premise? In most instances, several truckloads of material will be needed.
- Manure trucks (#23)
  - Not applicable to broiler or broiler breeder flocks. APHIS should add a “N/A” box if they are only going to generate one audit for all poultry, as in #25.
  - How is the auditor to audit this parameter?
- Prevent exposure to wild birds (#26)
  - Is all transport equipment included in this parameter?
  - Live haul vehicles, trailers, coops, transportation modules, and moffetts (forklifts) are typically kept outside. How does APHIS suggest that these items are not exposed to wild birds?
  - In audit parameter #22 it states, “Live bird delivery trucks making subsequent trips between the same origin and destination do not have to be cleaned and disinfected between each trip.” Is there less risk in live bird delivery than for wild bird exposure?
- Catch crews (#27)
  - Does this mean that a pullet or broiler catch crew can only catch one house/day?
  - Does this mean that a vaccination crew could only vaccinate one house/day?
  - Vehicles that pick up breeder eggs usually visit several locations to fill a truck. The driver will go into the egg storage area and move the egg racks to the truck. Is this practice included in #27?
  - Currently APHIS has a policy that if one house on a premise is positive, then the whole premise is positive. This parameter as written does not seem to align with the current APHIS policy.
- Handwashing/sanitizing (#28)
  - Handwashing stations are not routinely found on farms. If you are wearing gloves as part of your PPE, is handwashing necessary?
  - Is this a requirement on the infected premise or all premises in a buffer zone?
- Backyard poultry (#29)
  - This parameter has been included in previous sections of the audit.
- Water sources (#30)
  - How would premises that have open collection ponds be audited?
- Bedding storage (#31)
  - Does this mean that a three-sided barn with ventilation will not meet the intent of the audit?
  - Most broiler facilities do not have fully enclosed storage areas for bedding/litter.
- Mortality collection (#32)
  - Will rendering trucks that visit many farms to collect mortality be prohibited?
- LOS definition (#34)
  - Recommend that for broiler breeder facilities, indoor egg collection areas, and work rooms are included as employees usually must cross these areas to access the inside of the house.



- LOS procedures (#35)
  - Is the intent of this audit parameter for the auditor to evaluate employees crossing the LOS?
- Footwear (#36)
  - This is already addressed in #5.
  - Suggest a requirement to disinfect footwear instead of dedicated footwear for each house.
  - Is this a requirement on the infected premise or all premises in a buffer zone?
- Footwear disinfection (#37)
  - Footpans with dry bleach are not changed daily.
  - Are footpans still required to be changed daily if they are only used twice?
  - Must the grower maintain a log with the date/time the footpans are cleaned, changed, etc?
  - How will the auditor know if the footpans are changed daily?
  - Perhaps instruct the auditor to evaluate footpans and footbaths for the presence of debris, litter, etc.
- PPE (#38/#40)
  - What is meant by “sufficient?” How is the auditor to audit this parameter?
  - What is meant by “adequate?” How is the auditor to audit this parameter?
- Hand sanitizer (#39)
  - See comments from #28.

## Conclusion

The broiler industry is committed to working with you on the successful implementation of a proposed biosecurity audit. However, we have many questions, concerns, and suggested edits as previously detailed. As written, some of these parameters will require the company’s existing biosecurity programs to be significantly revised. Additionally, there are some parameters that may be outside of the grower and/or company’s control. We would appreciate the opportunity to visit with you and your team further on how to make this a successful endeavor for APHIS, the industry, and for the health and welfare of our birds. We encourage you to host a meeting with members of the poultry sector to review an updated version of the proposed biosecurity audit and entertain additional feedback.

Thank you for your consideration, and please do not hesitate to contact me with any questions.

Respectfully submitted,



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