

October 2008

OMB Clearance 0580-0015
Supporting Statement

Regulations (9 CFR, part 201) and Statement of General Policy (9 CFR, part 203)
Issued under the Packers and Stockyards Act (7 U.S.C. 181 – 229)
and Related Reporting and Recordkeeping Requirements

As, the Packers and Stockyards Program (P&SP) of the Grain Inspection, Packers and Stockyards Administration (GIPSA), we require regulated entities in the livestock, meat packing, and poultry industries to keep records, submit information to us, and provide information to third parties. The regulated entities are packers, live poultry dealers, stockyard owners, market agencies, and dealers. In general, the information required includes identifying, descriptive, procurement, and financial information and certifications.

This information collection package to renew the information collection approval includes:

P&SP consolidated 12 Annual Report forms (3000 Series) into 8 Annual Report forms. Each form was redesigned to enhance its appearance and logical flow to facilitate clarity and data entry; information collected on the forms was reduced and limited new information was added; and forms were combined together when possible so that a regulated entity would not receive multiple annual report forms.

The form structure for Series 3000 – Annual Report Forms is as follows:

- Forms 3300, 3310 and 3200 were combined and is now form 3001
- Form 3600 was replaced with 3002
- Forms 3400 and 3500 were combined and is now form 3003
- Forms 3000 and 3100 are now forms 3004 and 3005
- Form 3700 is now form 7001
- Forms 3110 and 3410 is now form 7002
- Form 7003 is a new form
- Form 3610 was eliminated

Social security numbers were removed from any form which contained a request for a social security number.

All forms are being updated to include the EEO statement.

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

The package is being revised to comply with amendments to the Packers and Stockyards Act of 1921 based on the 2008 Farm Bill. Specifically, the form changes are being made to conform to the reporting requirements Congress legislated.

As GIPSA, we administer the provisions of the Packers and Stockyards Act of 1921 (7 U.S.C. 181-229), as amended and supplemented (P&S Act). Among other things, the P&S Act makes it unlawful for packers, dealers, market agencies, and live poultry dealers to engage in unfair, unjustly discriminatory, deceptive, or anti-competitive practices in the livestock, meat, and poultry industries. Through policy statements in 9 CFR, part 203, we provide guidelines for members of the livestock, meat packing, and poultry industries. Through the regulations in 9 CFR, part 201 (the regulations), we implement provisions of the P&S Act. The P&S Act, the regulations, and policy statement require the collection of information in the form of information to be filed with the Secretary of the United States Department of Agriculture (USDA), records to be kept, and information to be disclosed to third parties.

Through enforcement of the P&S Act, we regulate the business practices of those engaged in commerce in livestock and live poultry marketing, as well as meat and poultry packing. The P&S Act is designated to protect the financial interests of livestock and poultry producers engaged in commerce of livestock and live poultry sold for slaughter. It also protects members of the livestock and poultry marketing, processing, and merchandising industries from unfair competitive practices.

Section 401 of the P&S Act (7 U.S.C. 221) requires every packer, live poultry dealer, stockyard owner, market agency, and dealer to keep such accounts, records, and memoranda to fully and correctly disclose all transactions involved in its business. In addition, section 401 specifies that the Secretary may prescribe the manner and form in which such accounts, records, and memoranda must be kept. Most of these accounts, records, and memoranda are kept by the subject entities as usual and customary records.

Market agencies, dealers, and packers whose average annual purchases exceed \$500,000 are required to file and maintain reasonable bonds under such rules and regulations as the Secretary prescribes in 7 U.S.C. 204.¹

Section 409 of the P&S Act (7 U.S.C. 228b) requires a written agreement to be disclosed in the records of any market agency or dealer selling livestock, when the parties to the sale expressly agree to extend payment after the close of the next business day.

Section 206 of the P&S Act (7 U.S.C. 196) requires sellers to give written notice to the packer and file the notice with the Secretary to preserve the benefit of the trust provisions of section 206. Section 207 of the P&S Act (7 U.S.C. 197) require sellers or poultry

¹ NOTE: 7 U.S.C. 204 is a freestanding provision and is not contained in a section of the P&S Act.

growers to give written notice to the live poultry dealer and file the notice with the Secretary to preserve the benefit of the trust provisions of section 207.

Section 306 of the P&S Act (7 U.S.C. 207) requires stockyard owners to file schedules showing all rates and charges for the stockyard services and the schedules must be printed and kept open for public inspection at the stockyard. In addition, section 306 requires the stockyard owner to file changes in the rates or charges with the Secretary and publish the changes for public inspection.

Section 309(a) of the P&S Act (7 U.S.C. 210(a)) requires complaints to be submitted in writing and requires the stockyard owner, market agency, or dealer against whom the complaint was made to either satisfy the complaints (make reparation) or to answer it in writing.

Section 402 of the P&S Act (7 U.S.C. 222) applies sections 6, 8, 9, and 10 of the Federal Trade Commission Act (FTC Act) to the jurisdiction of the Secretary of Agriculture in enforcing the provisions of the P&S Act. In addition, these sections apply in order for USDA to provide information for the use of Congress. Requirements for the collection of information in section 6 of the FTC Act include:

- Gathering and compiling information concerning the organization, business, conduct, practices, and management of any corporation engaged in commerce to regulate commerce and the corporation's relation to other corporations and to individuals, associations, and partnerships. (Section 6, paragraph (a))
- Requiring corporations to file annual and special reports or written answers to specific questions to furnish the required information. (Section 6, paragraph (b)).
- Making public such portions of the information obtained, except trade secrets and names of customers, appropriate in the public interest, and making annual and special reports to the Congress and to publish reports for public information and use. (Section 6, paragraph (f))
- Requiring other agencies, when directed by the President, to furnish records, papers, and information in their possession relating to any corporation subject to these provisions. (Section 8)
- Providing the Agency or its duly authorized agent or agents, at all reasonable times to have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against. (Section 9)
- Specifying fines for violations related to false entries or statements of fact in any required report, account, record, or memorandum kept by any subject corporation, and for failing to file any required annual or special report. (Section 10)

Collection of information requirements contained in the regulations in 9 CFR, part 201 and the policy statements in 9 CFR, part 203 are discussed under question number 2 and organized by the required forms and sections of the regulations.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

In general, the information required includes identifying, descriptive, procurement, and financial information and certifications. The information is used:

- To provide necessary business transaction safeguards;
- To protect financial interests and trade practices of livestock producers, poultry growers and others in the livestock, meat packing and poultry industries;
- To help assure that the regulated entities do not engage in unfair, unjustly discriminatory, or deceptive trade practices or anti-competitive behavior:
- To preserve business transactions occurring under the P&S Act;
- To assist GIPSA personnel in carrying out their regulatory responsibilities;
- To determine if unfair, unjustly discriminatory, or deceptive practices exist;
- To investigate complaints by auditing the firm's business records;
- To settle the dispute by P&SP or, when violations of the P&S Act are disclosed, as legal evidence in a formal administrative hearing; and
- To make available to the users of public stockyards and custom feed yards information as to the charges they will be assessed and any potential conflicts of interest that may exist.

Specific requirements for uses of information to be collected follow by specific form and regulation.

Reporting Requirements – Specific Forms

Registration Applications and Inquiry Forms – Series 1000

The forms require information to (1) identify and describe the business; (2) certify the financial condition of the business; (3) determine if the business requires a bond; and (4) determine if the business operates under the jurisdiction of P&SP.

P&SP-1000 – Application for Registration

Each person operating or desiring to operate as a market agency or dealer at a posted stockyard or otherwise in commerce must file an application for registration.

P&SP-1100 – Application for Registration – Packer Buyer

Each person operating or desiring to operate as a packer buyer at a posted stockyard or otherwise in commerce must file an application for registration.

P&SP-1200 – Stockyard Information

Each facility meeting the definition of a stockyard (see 7 U.S.C. 202) must provide information about the stockyard location and operations. P&SP posts each stockyard.

P&SP-1300 – Posted Stockyards Name Change

The owner notifies us of ownership changes or other changes in name for the physical stockyard facility, which is posted.

P&SP-1400 – Packer Inquiry

We send this form periodically to slaughtering packers; the information helps us determine whether they are under our jurisdiction. The form requires identifying information, purchase and sales information for livestock, meat, and meat products. We notify each firm purchasing more than \$500,000 worth of livestock for slaughter annually that it must file the annual report (see form P&SP-3000).

P&SP-1500 – Live Poultry Dealer Inquiry

We send this form periodically to live poultry dealers; the information helps us determine whether they are subject to our jurisdiction. The form requires identifying information, purchase, contract production, and sales volumes. If a firm has live poultry purchases or a poultry growing arrangement valued in excess of \$100,000 annually, it is placed on notice by P&SP to file annual reports. (See form P&SP-3500)

Bonds, Trust, and Trust Funds Forms – Series 2000

The forms require identification information for the principal, surety, trustee, and payee; the amount of the trust; and to be certified by the principal. Approximately 1,100 of these subject firms have filed trust fund agreements and about 1,600 have filed trust agreements. Trust fund agreements have cash, U.S. treasury bonds, or certificates of deposit pledged as collateral. The securities pledged under these agreements must be held by a trustee—a financially responsible, disinterested person. The trustee may not release these securities until we receive proof that all obligations for livestock have been paid.

Livestock sellers use one of the six proof of claim forms to file their claim under a bond or bond equivalent (trust fund agreement or trust agreement) when the seller did not receive payment for livestock sold. Using the appropriate form, the seller specifies the amount owed for the livestock that was sold for which the seller did not receive payment. The livestock seller needing to file a claim contacts the regional office of P&SP to

determine which form they need to use. The appropriate form will be determined (1) by whether the livestock buyer's purchases under the P&S Act are covered by a bond, trust fund agreement, or trust agreement and (2) by which condition clause (1, 2, 3, or 4) applies to the bond, trust fund agreement, or trust agreement. These are forms P&SP-2110 and 2120.

P&SP-2000 – Bonds

Most packers and registrants obtain their bond coverage through surety companies approved by the U.S. Treasury Department. The amount of the bond is based on the annual volume of business carried on by a particular firm. Bonds serve as financial protection to sellers of livestock in that they may recover money from the surety underwriter for proceeds due from the sale of their livestock in the event a firm bonded under the P&S Act fails to pay.

P&SP-2100 – Bond Rider

This form is a rider to the bond under P&SP-2000. It is required when the amount of the bond, surety, or ownership changes.

P&SP-2110 – Proof of Claim under Surety Bond, Trust Fund Agreement, and Trust Agreement – Clause No. 1

Any person who did not receive payment for livestock sold through a market agency, selling on commission (the Principal), uses this form to submit a claim against the Principal's bond.

P&SP-2120 – Proof of Claim under Surety Bond, Trust Fund Agreement, and Trust Agreement – Clause No. 2, 3 & 4.

Any person who did not receive payment for livestock sold uses this form to submit a claim against the livestock buyer's bond under condition clause 2, 3, or 4.

P&SP-2200 – Trust Fund Agreement in Lieu of Bond

A trust fund is one method of complying with bonding requirements. Many firms who are unable to meet surety company requirements for bond coverage use the trust fund agreement as an alternative. They pledge cash, U.S. treasury bonds, or certificates of deposit under trust fund agreements to a trustee who holds them as collateral. If the principal on a trust fund agreement fails to pay for livestock, the sellers can file claims with the trustee. The securities pledged under the trust fund agreement are disbursed to claimants up to the total amount of the trust fund agreement. If claims exceed the face amount of the trust fund agreement, the fund is pro-rated among the claimants.

P&SP-2300 – Trust Agreement

The regulations in 9 CFR 201.27 allows persons subject to the bonding requirements to use a letter of credit and trust agreement in lieu of filing a bond.

P&SP-2400- Rider for General Use with Trust Fund Agreement or Trust Agreement

This form is used as a rider to trust fund agreements under P&SP-2200 and trust agreements under P&SP-2300. It is required when the amount of the agreement, trustee,

clearee, clearing services, depository, or ownership changes. The form identifies who issued the agreement and the applicable changes.

P&SP-2500 – Termination of Trust Agreement or Trust Fund Agreement

This information on this form provides certification for the principal that all obligations have been paid. Approximately 500 trust fund agreements and trust agreements are terminated annually, necessitating the filing of this form. In a large majority of cases (approximately 95 percent), there are no outstanding obligations to record on P&SP-2500. However, any outstanding obligations must be cleared before the collateral can be released.

P&SP-2600 – Letter of Credit

The regulation in 9 CFR 201.27 allows persons subject to the bonding requirements to use a letter of credit and trust agreement in lieu of filing a bond.

P&SP-2610 – Automatic Renewal Rider

The bank providing a letter of credit (Form P&SP-2600) uses this form to automatically renew the standby letter of credit, issued as collateral for a trust agreement and to specify the length of time during which the letter of credit will be automatically renewed.

Annual Reports and Related Special Reports – Series 3000 and 7000

We use the various annual reports and related forms to monitor bond requirements, financial solvency, and custodial accounts of regulated entities. If financial difficulties are indicated on the annual report or any of its related forms, we audit the firm and require the needed changes to assure financial stability. These forms are used extensively in our investigative work, administrative hearings, to determine the amount of required bond, and to monitor changes in industry practices and industry structure.

P&SP-3001 – Annual Report of Dealer or Market Agency Buying on Commission

Dealers or market agencies buying on commission complete this report annually. It requests contact information, the dollar volume of livestock purchased for the year, and financial statements.

P&SP-3002 – Annual Report of Live Poultry Dealers

Live poultry dealers complete this report annually. This form requires contact information, business volumes, and financial statements.

P&SP-3003 – Annual Report of Market Agency - SOC

Auction markets complete this form annually. The form requires contact information, financial information, and volumes.

P&SP-3004 – Annual Report of Packers

Packers complete this form annually. The form requires contact information, financial information, and volumes.

P&SP-3005 – Supplement to Annual Report of Packers

The supplemental form is completed by packers with more than one slaughtering or processing plant to collect information regarding each processing plant.

P&SP-7001 – Status of Custodial Bank Account for Shippers’ Proceeds Special Report

All market agencies selling on a commission basis are required to set up and maintain a separate bank account entitled “Custodial Account for Shippers’ Proceeds.” All custodial bank accounts must be in FDIC-insured banks. Market agencies deposit to the custodial account the monies (gross proceeds) received from buyers in payment for purchases of livestock on a commission basis. This form requires information on the identification and analysis of the custodial bank account, including the status of debits and credits. This report is used to determine the status of the custodial account and to assure that the firms are complying with the regulations in establishing and maintaining the custodial account. If the custodial funds are being handled improperly, P&SP will investigate and issue an administrative complaint.

P&SP-7002 Supplemental Balance Sheet Special Report

The Supplemental Balance Sheet Special Report is used when P&SP requires a more detailed financial report from a business. If P&SP believes that a business is insolvent, they will provide the business with the report in the course of a financial audit.

P&SP-7003 – Special Report for Review of Dealer, Market Agency and Packer Bonds

The Special Report for Review of Dealer, Market Agency and Packer Bonds will be provided to new businesses to determine bond requirements. This form is shorter than an annual report and focuses on the information required to determine bond amounts. Targeting the information collection to information needed to determine the business’ bond amount encourages completeness and avoids creating an impression that P&SP will accept incomplete annual report forms.

Scale Test Reports and Weigher’s Acknowledgements – Series 4000

We require at least two scale tests each year, the results of those tests must be submitted to us. Tests are usually conducted by an agency of a State or a commercial firm. We use the information from the following forms to ensure that the scales have been tested. The forms provide us with a profile and performance record on each scale. Accurate scales help assure producers honest weights. If scales are inaccurate, they are condemned and cannot be used until corrected and retested.

P&SP-4000 – Weigher’s Acknowledgement and Agreement

Persons weighing livestock for purposes of purchase or sale under the P&S Act are required to perform their duties in accordance with official instructions. These instructions are contained in our publication entitled *Instructions for Weighing Livestock, Scales and Weighing Memorandum No 3*. The weighmaster signs this form to acknowledge that receipt of the instructions and to agree to comply with the official weighing instructions. The form also requires identifying information for the weighmaster.

P&SP-4100 – Weigher’s Acknowledgement and Agreement for Weighing Live Poultry
Persons weighing poultry for purposes of purchase or sale under the P&S Act are required to perform their duties in accordance with official instructions. These instructions are contained in our publication entitled *Instructions for Weighing Live Poultry, Scales and Weighing Memorandum No. 3P*. This publication includes instructions for weighing live poultry and a form for the weighmaster to sign acknowledging that he has read and will comply with the official weighing instructions.

P&SP-4200 – Livestock Scale Test

This form is used for the livestock scales used by each stockyard owner, market agency, dealer or packer who weighs livestock for purposes of purchase or sale.

P&SP-4300 – Monorail Scale Test

This form is used by each packer that owns or operates monorail scales on which carcasses are weighed for the purpose of purchase on a dress weight basis.

P&SP-4400 – Vehicle Scale Test

This form is used by packers and live poultry dealers or handlers who own or control scales used for weighing live poultry.

P&SP-4500 – Grain Hopper Scale Test – Feed

This form is used by packers and live poultry dealers or handlers who own or control scales used for weighing feed.

Reparation Complaint – Series 5000

P&SP-5000 – Reparation Complaint

This form is submitted for complaints alleging damages suffered in connection with livestock transactions subject to the P&S Act. The complaint must provide identifying information and a description of the complaint. About 50 complaints are filed annually of which about three-fourth are settled informally. P&SP cannot enforce payment of awards, but the complainant receiving an award may file for judgment within 1 year in Federal district courts.

Report Comment Forms – Series 6000

P&SP-6010 – Statistical Report Comment Form

Form P&SP-6010 is a comment form used by customers to provide feedback to P&SP on *The Packers and Stockyards Statistical Report*.

P&SP-6020 – Annual Assessment Report Comment Form

Form P&SP-6020 is a comment form used by customers to provide feedback to P&SP on *The Annual Assessment Report* and to collect information from industry about changes in the industry.

Reporting (Other than Forms), Recordkeeping, and Third Party Disclosure – Regulations

9 CFR 201.17 – Requirement for Filing Tariffs

The filing of the schedule of charges provides users of the service with the fee they will be assessed if they elect to utilize the stockyard services. The schedule filed permits a review to determine if the rates are nondiscriminatory and that they are assessed uniformly. The filing and public notice of changes at least 10 days before they will be effective permits the filing of complaints concerning the proposed rates and charges.

9 CFR 201.42(e) – Custodial Accounts for Trust Funds

Payments received by market agencies selling on commission are trust funds. This regulation provides safeguards for those funds until they are properly distributed. Market agencies are required to establish and maintain a separate trust bank account and must maintain such accounts and records that will disclose at all times the true owner of the funds, amount due each owner, and that these funds are being handled as trust funds.

9 CFR 201.43(a) – Payment and Accounting for Livestock

(a) This regulation requires that market agencies selling livestock on a commission basis (agent) for livestock sellers transmit or deliver a full accounting of the transaction. The accounting provides the seller (principal) with information necessary to determine about the price for the livestock and that the deductions from the proceeds of sale were lawful. The issuance of a net check to the seller without proper accounting may permit the agent to buy the livestock for his own account, use an improper weight, engage in collusive arrangements or deduct for other than authorized charges.

9 CFR 201.43 (b) and (c) – Written Credit Agreements

(b) No packer, market agency, or dealer shall purchase livestock for which payment is made by a draft which is not a check, unless the seller expressly agrees in writing before the transaction that payment may be made by such a draft. No packer, market agency, or dealer purchasing livestock for cash and not on credit, whether for slaughter or not for slaughter, shall mail a check in payment for the livestock unless the check is placed in an envelope with proper first class postage prepaid and properly addressed to the seller before the close of the next business day following the purchase of livestock and transfer of possession or in the case of purchase on a carcass or grade and yield basis before the close of the first business day following determination of the purchase price.

(c) Each packer, live poultry dealer, market agency, or dealer who employs an agent to purchase livestock for him, shall in transactions where the agent uses his own funds to pay for livestock purchased on order, deliver to the agent the full purchase price before the close of the next business day.

The complete accounting requirements are necessary so our investigators can determine if the business is being conducted in compliance with the P&S Act and regulations. If

proper records are not maintained, unfair and fraudulent practices cannot be proven and livestock producers could suffer serious financial losses.

9 CFR 201.44 – Market Agency to Render Prompt Accounting for Purchases on Order

This regulation requires each market agency buying on commission to provide the principal with a complete record of the transaction. The principal is not present at the location where the agent negotiates the purchase of the livestock for his account. The complete accounting by the agent provides the principal with the information necessary to determine if his agent has complied with his instructions and assists in determining if the agent has engaged in fraudulent practices. The records provide evidence during an investigation when the agent has engaged in the fraudulent practices of falsely increasing weights and prices.

9 CFR 201.45 – Market Agencies to Make Records Available for Inspection by Owners, Consignors, and Purchasers

This regulation requires that market agencies make available for inspection, by their principals, all documents relative to charges paid by the market agency and deducted from the gross proceeds of livestock sold or added to the purchase price of livestock purchased.

9 CFR 201.49 – Requirements Regarding Scale Tickets Evidencing Weighing of Livestock, Live Poultry, and Feed

Scale tickets are necessary to ensure weight values are properly recorded and all necessary information concerning the weighing activity recorded. The regulation requires scale tickets evidencing the weighing of livestock, live poultry, and feed (where the weight of feed is a factor in determining payment to livestock producers and poultry growers). It further requires that all parties to a transaction be supplied with a copy of the scale ticket for their records. These requirements are essential to assure that the weighing function is properly documented.

Weighing is frequently conducted beyond the personal observations of one or more interested parties. Without the scale ticket information, inaccurate and incomplete accounting has resulted in fraudulent and misleading weights and has prevented reconstruction of transactions when disputes occurred. If scale tickets were not required, then we or any other Government agency could not document weight fraud for investigations. Scale tickets are considered usual and customary records.

9 CFR 201.55 – Purchases, Sales, Acquisitions, Payments and Settlements to be made on Actual Weights

This regulation assures that all parties to a transaction are aware of any weight adjustment, which has been made, and the basis for such adjustment. In addition, it requires records to support such adjustments. Weighing is frequently conducted beyond the personal observation of one or more of the interested parties in the transaction. Without disclosure of any adjustments to the actual weights, the adjusted weights reported on accountings to each party to a transaction could be false, or at least misleading, and would result in significant monetary losses in many instances. Without

documentation of the adjustments, investigation of weight transaction by us or a party to the transaction would be impossible.

9 CFR 201.56 – Market Agencies Selling on Commission; Purchases from Consignment

This regulation requires a market agency selling livestock on a commission basis to disclose the name of the buyer on the accounting to its consignor when an owner, officer, agent, or employee of the market agency purchases consigned livestock. The purpose of this requirement is to assure that disclosure is made to the livestock seller when his livestock is sold by his market agent in less than an “arm’s-length” transaction.

Without this information, livestock sellers might be unaware that their livestock had been sold to someone associated with their market agent. This information is essential for the seller to make informed decisions as to the quality of the selling services received and whether the market agent has an unacceptable conflict of interest. Further, this disclosure serves to assure that livestock sold in less than “arm’s length” transactions are sold in an open, competitive manner and in the best interest of the livestock seller.

Without the required disclosure, many market agencies might be placed under considerable pressure from owners, officers, agents, and employees to give favored treatment in the sale of consigned livestock to the detriment and financial harm of the consignors.

9 CFR 201.61 – Market Agencies Selling or Purchasing Livestock on Commission; Relationship with Dealers

The market agency buying or selling livestock on a commission basis must maintain a position at all times that would assure absolute loyalty to its principals. No interest is allowed to interfere between the agent and principal. The regulation helps provide the principals of buying agents with notice that their agent purchased livestock from a dealer whose operations are cleared and financed by the agent. The relationship of the buying agent and the dealer it clears may conflict with the interest of the principal. The market agency selling livestock to an independent dealer must disclose the name of the buyer and the nature of the financial relationship between the buyer and the market agency.

The disclosure to the principal that the agent has a relationship with the buyer or seller permits the principal to determine if there is a conflict of interest that adversely affects the principal. Also, the principal can elect not to use the agent when he determines the relationship is not in his best interest. If the disclosure is not made, it is possible for the agent and dealer to engage in practices that would fraudulently increase the cost to the principal.

9 CFR 201.72 – Scales; Testing of

Section 201.72 requires that scales used to weigh livestock, poultry, and feed (when weight of feed is used to determine settlement) be tested at least twice a year and that forms used for reporting such tests be retained by stockyard owners, market agencies, dealers, packers or live poultry dealers (see forms section)

9 CFR 201.95 – Inspection of Business Records and Facilities

This regulation does not contain a specific recordkeeping requirement. It requires those firms subject to the P&S Act to make their business records available to our representatives for inspection and copying.

9 CFR 201.99 – Purchase of Livestock by Packers on a Carcass Grade, Carcass Weight, or Carcass Grade and Weight Basis

This regulation requires packers purchasing livestock on a carcass basis to: (1) maintain the identity of each seller's livestock and carcasses; (2) furnish the seller a true, written account of such purchase showing significant details of the accounting; and (3) maintain sufficient records to substantiate settlement for each purchase transaction. The regulation identifies records required when a packer purchases livestock on a carcass basis.

The purpose of this regulation is to provide safeguards, which are necessary in order to protect the interests of producers selling livestock on a carcass basis. When a packer purchases livestock in this manner, details of the transaction must be made known to the seller prior to the purchase. The grade, weight, condemnations, and trimming are determined within the physical facilities of the packing plant. These determinations are usually conducted beyond the personal observation and verification of the seller or his representative and factor into determining the price that will be paid for the livestock.

9 CFR 201.100 – Records to be Furnished Poultry Growers and Sellers

This regulation requires the following records to be kept: (a) contract; (b) settlement sheet; (c) USDA records; (d) grouping or ranking sheets (of growers); and (e) records of poultry purchases. The records are considered usual and customary. The records help assure fairness to contract growers and sellers.

Growers without contracts and full accounting at settlement could face great losses to their net income for services performed due to manipulation of inputs to the growout operation as recorded on the settlement sheet. By the same token, live poultry dealers could discriminate among their growers by use of different contracts or preferential amendments, use of inaccurate feed or medication inputs to the grower, manipulation on ranking sheets, and many other factors could be adjusted to affect the final payment to growers. If there were no written contract or settlement requirements, there would be no assurance to the grower of the terms other than the verbal statements of the live poultry dealer.

Our investigators use these records to determine if growers and sellers are receiving fair, nondiscriminatory treatment and true and accurate settlements on both growout contracts and live-poultry sales.

9 CFR 201.200 – Sale of Livestock to a Packer on Credit

This regulation helps protect cash sellers of livestock from losing an interest under the trust provisions of the P&S Act. The regulation provides the language to be used as an acknowledgment by a livestock seller that the seller would lose any interest in the trust

provision be entering into this credit sale and agreeing to such sale. This would be extremely costly to livestock sellers if they sold livestock on credit and did not have an opportunity to obtain such payment through the trust provision. The acknowledgment is necessary when a packer asks the seller of livestock to extend credit. If the sale is on a cash basis, such an acknowledgment is not required.

In addition, the regulation provides that the packer retain the acknowledgment in its records for at least 2 calendar years. This requirement allows investigators to determine if such agreement has been signed.

9 CFR 203.4 – Statement with Respect to the Disposition of Records by Packers, Live Poultry Dealers, stockyard owners, market agencies and dealers

Each packer, live poultry dealer, stockyard owner, market agency and dealer may destroy or dispose of accounts, records, and memoranda which contain, explain, or modify transactions in its business after such accounts, records, and memoranda have been retained for a period of 2 full years. The statement goes on to say that specific records made or kept by a packer may be disposed of after 1 year.

The statement does not require specific records to be generated; it specifies the time period after which certain records, if made or kept, may be destroyed. This statement relieves the burden on packers by specifying when required records may be disposed of and thus reducing storage requirements.

9 CFR 203.14 – Statement with Respect to Advertising Allowances and Other Merchandising Payments and Services

This policy statement addresses problems with payments to customers by meat packers for advertising and other promotional services. Generally, this would include cooperative advertising agreements and any other promotional programs offered to customers. The policy statement recommends that the packer develop a written plan and provide notification of the plan to its customers. This information is necessary to determine whether promotional allowances are being offered and conducted in a discriminatory manner. The information is given to competing retail customers of the packer as usual and customary records. In addition, the statement sets forth specific guidelines as to the kinds of information that should appear in the cooperative advertising agreements and promotional programs.

9 CFR 203.15 – Trust Benefits under Section 206 and 207 of the P&S Act

This policy statement clarifies the requirement and recommends the type of information to be included in the written notice to be filed by an unpaid poultry grower or unpaid cash seller of livestock or live poultry to a packer or live poultry dealer. The document preserves the seller's rights to trust funds. The generated document is required when a packer or live poultry dealer fails to pay.

9 CFR 203.16 – Mailing of Checks in Payment for Livestock Purchased for Slaughter, for Cash and Not on Credit

The packer is to prepare a written record, when a livestock seller is willing to allow a packer to mail a check in payment for livestock by the close of the next business day. The document states that such an agreement does not constitute an extension of credit.

This record is generated when a seller is agreeable to letting a packer mail a check the next business day and is necessary when, for example, a seller is not present to receive payment and does not wish to authorize a representative to receive payment. Without the agreement to mail the checks, the packer would have to give the payment to the seller's representative. The document is retained by both the seller and the purchaser of livestock and may be canceled at any time.

9 CFR 203.17 – Statement of General Policy with Respect to Rates and Charges at Posted Stockyards

Stockyard owners and market agencies may file a tariff containing any level of charges and the Agency will accept the tariff for filing after 10 day's notice. No investigation will be conducted concerning the tariffs filed except when a valid complaint is received or under compelling circumstances.

9 CFR 203.18 – Statement with Respect to Packers Engaging in the Business of Custom Feeding Livestock

When a packer owns or operates a custom feedlot, the feedlot customers must be fully advised of the relationship between the feedlot and packer and of their rights with respect to the marketing of their livestock. When a custom feedlot is owned or operated by a packer and when such packer purchases fed livestock from the feedlot this method of operation may give rise to a conflict of interest or to competitive problems. This policy statement also requires that feedlot customers be treated equally and that marketing decisions rest solely with the feedlot customer unless otherwise expressly agreed. Records that may be generated in carrying out the provisions of this policy statement would be usual and customary records.

9 CFR 203.19 – Statement with Respect to Packers Engaging in the Business of Livestock Dealers or Buying Agencies

When a packer contemplates operating as a livestock dealer or buying agency it is encouraged to consult with P&SP prior to commencement of such activities. When a packer/dealer or packer/buying agency arrangement appears to be in conflict of interest and does not maintain open and fair competition in the livestock and packing industries, an investigation will be made and appropriate action will be taken if violations of the P&S Act have occurred. Records that may be generated in carrying out the provisions of this policy statement would be usual and customary records.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The new Packers and Stockyards Automated System (PSAS) will allow the program's scanned documents to be stored in a state of the art Enterprise Content Management (ECM) system that will allow for improved security controls, easier access by its users, and improved document versioning controls.

The data management piece of the new system will vastly improve P&SP's data integrity by integrating what are currently several systems across multiple data bases into one completely integrated system with all the data residing in one system and database. The system will include data validation and completeness checks that will aid in the capturing of more complete data and accurate data than was possible under the old system. The multi-tiered and web based implementation will provide a basis for a future extension to allow that capturing of data by the livestock industry entities who are regulated by GIPSA via a web-based public interface. All of these features will help reduce the data entry load on the staff in P&SP. A webpage has been developed and will be available to GIPSA employees January 1, 2009.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose described in item 2 above.

The information that subject entities are required to furnish and the records they are required to maintain are not available from other sources, either within Government or from non-government sources. This is confirmed during day-to-day working relations with Federal and State agencies and other organizations.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

To minimize the burden on small entities, the regulations required the least information necessary to carry out the program. The number of small entities affected are 1,972 active entities holding a bond/financial instrument of \$10,000.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing the burden.

Upon reviewing the P&SP regulations, we determined that the information to be maintained is the minimum necessary to administer the program. It is vital that current data is recorded so that fair and equitable marketing practices are exhibited.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the general information collection guideline in 5 CFR 1320.5.

The recordkeeping/reporting procedures are consistent with the guidelines established under 5 CFR 1320.5.

8. *Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting form, and on the data elements to be recorded, disclosed, or reported. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, soliciting comments on the information collection prior to submission to OMB.*

During the 60-day comment period no comments were received as a result of the notice published in the *Federal Register* on July 7, 2008, (73 FR 38394 copy attached).

P&SP personnel, as a part of everyday business operations, attend meetings and are in contact with industry trade groups, associations, State Departments of Agriculture, farm organization, and other interested members of the livestock, meat packing, and poultry industries. The P&S Act and regulations are discussed during these contacts and information solicited on the effectiveness of the agency's operations, which includes the need to obtain information from the affected industries.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

The recordkeeping/reporting requirements are mandated by law. No payments are made to respondents.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

Records/reports received from firms and individuals subject to the P&S Act are considered confidential and protected under the Freedom of Information Act. Information on individual firms is not released. Any P&SP employee releasing such information without proper authority is subject to a fine and/or imprisonment (5 U.S.C. 50).

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and others that are considered private. His justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from who the information is requested, and any steps to be taken to obtain their consent.*

This collection of information contains no such questions of a sensitive nature. Requests for records or information of a personally sensitive nature are not asked or maintained.

12. *Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.*

Number of respondents – 18,684

Frequency of response varies, see attached APHIS Form 71

Annual burden hours – 318,630

Burden hours were determined by experienced GIPSA personnel and industry input, through meetings and contacts as described above in item 8, to provide the best estimates of the time to complete forms and maintain records that are required under the P&S Act, P&SP regulations, and policy statement and that are not considered usual and customary records.

The cost to the public was determined by multiplying the total number of burden hours by the wages per hour rate. P&SP estimated that the average hourly wage rate as \$7.85. Therefore, the total cost to the public would be \$7.85 per hour x 318,630 burden hours per year = \$2,501,246.

13. Provide estimates of the total annual cost burden to respondents or recordkeepers resulting from the collection of information (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.

There are no capital or startup costs associated with this information collection.

14. Provide estimates of annualized cost to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.

See APHIS Form 79. Costs were estimated based on a consensus of opinion by experienced GIPSA personnel who calculated the time and cost factors required to properly analyze and process each response. Due to the consolidation of six forms into two and the salary level of staff involved in information collection, costs have decreased.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

P&SP consolidated 12 Annual Report forms (3000 Series) into 8 Annual Report forms. Each form was redesigned to enhance its appearance and logical flow to facilitate clarity and data entry; information collected on the forms was reduced and limited new information was added; and forms were combined together when possible so that a regulated entity would not receive multiple annual report forms.

This results in an increase in 13,595 hours.

The decrease of 2730 respondents was due to normal industry fluctuation.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

There are no plans to publish much of the information obtained through this collection. However, GIPSA publishes summaries of the data obtained from the annual report forms, P&SP-3000, 3300, and 3400 in an annual statistical report. See Packers and Stockyards Statistical Report, 2006 Reporting Year (attached to package).

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The Federal government would incur higher printing costs if forms, which were otherwise usable, had to be discarded because of an OMB expiration date. Therefore, we are seeking approval to not display the expiration date of OMB approval.

18. Explain each exception to the certification statement identified in Item 19 “Certification for Paperwork Reduction Act Submissions” of OMB Form 83-1.

There are no exceptions to the certification statement.