

**Supporting Statement**  
**0580-New**

Implementation of Regulation Required Under Title XI of the Food, Conservation and Energy Act of 2008; Undue and Unreasonable Preferences; Unfair, Unjustly Discriminatory and Deceptive Practices; Dispute Resolution Under the Packers and Stockyards Act, 1921

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, swine contractors, and dealers. In general, the information required includes identifying, descriptive, procurement, and financial information and certifications.

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

In accordance with the authority granted to the Secretary by the Packers and Stockyards Act of 1921 and in accordance with the requirements of Title XI of the Food, Conservation and Energy Act of 2008 (Farm Bill) (P.L. 110-246) the Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing regulations under the Packers and Stockyards Act, 1921, (P&S Act) (7 U.S.C. 181 *et seq.*) that clarify when certain conduct in the livestock and poultry industries represents the making or giving of an undue or unreasonable preference or advantage or subjects a person or locality to an undue or unreasonable prejudice or disadvantage. These proposed regulations also establish criteria GIPSA will consider in determining whether a live poultry dealer has provided reasonable notice to poultry growers of any suspension of the delivery of birds under a poultry growing arrangement; when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the P&S Act; and whether a live poultry dealer or swine contractor has provided a reasonable period of time for a poultry grower or a swine production contract grower to remedy a breach of contract that could lead to termination of the poultry growing arrangement or swine production contract.

The Farm Bill also instructed the Secretary to promulgate regulations to ensure that producers and growers are afforded the opportunity to fully participate in the arbitration process if they so choose. We are proposing a required format for providing poultry growers, contract swine producers and livestock producers the opportunity to decline to use arbitration if arbitration is required in a contract and proposing criteria we will consider in ensuring growers and producers have a meaningful opportunity to participate fully in the arbitration process if they voluntarily agree to do so. We will use these criteria to assess the overall fairness of the arbitration process.

In addition to proposing regulations in accordance with the Farm Bill, GIPSA is proposing regulations that would prohibit certain conduct because it is unfair, unjustly discriminatory or deceptive, in violation of the P&S Act. These additional proposed regulations complement those required by the Farm Bill to help ensure fair trade and competition in the livestock and poultry industries.

These regulations are intended to address the increased use of contracting in the marketing and production of livestock and poultry by entities under the jurisdiction of the P&S Act, and practices that result from the use of market power and alterations in private property rights, which violate the spirit and letter of the P&S Act. The effect increased contracting has had and continues to have on individual agricultural producers has significantly changed the industry and the rural economy as a whole, making these proposed regulations necessary.

Specifically, GIPSA proposes to amend the regulations under the P&S Act by adding the following new sections:

- §201.94 (b) – would require entities operating subject to the P&S Act to maintain records that justify their treatment of growers and producers.
- §201.213 – would allow GIPSA to collect copies of example contracts from packers and live poultry dealers and make those example contracts available for public viewing on its website.
- §201.215 – would require a live poultry dealer to give adequate notice of any suspension of delivery of poultry.
- §201.218 – would include criteria the Secretary will consider when determining whether a producer or poultry grower has been given sufficient time to remedy a breach of contract.

*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 do the following:

- Provide necessary business transaction safeguards;
- Protect financial interests and trade practices of livestock producers, poultry growers and others in the livestock, meat packing and poultry industries;
- Help assure that the regulated entities do not engage in unfair, unjustly discriminatory, or deceptive trade practices or anti-competitive behavior;
- Preserve business transactions occurring under the P&S Act;
- Assist GIPSA personnel in carrying out their regulatory responsibilities;

- Determine if unfair, unjustly discriminatory, or deceptive practices exist;
- Investigate complaints by auditing the firm's business records;
- 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
- 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 the information to be collected follow by specific regulation:

- Proposed new § 201.94 (b), "Information as to business; furnishing of by packers, swine contractors, live poultry dealers, stockyard owners, market agencies, and dealers; records retention," indicates what would be required of a business or other regulated entity when a statute or regulation mandates the maintenance of written justification to verify a business action. The proposed regulation requires a written business justification by an entity subject to § 202 of the P&S Act and reflects the routine record requirements of § 401 of the P&S Act. The proposed specifications amount to prior indication of those circumstances in which a regulated entity may expect to maintain and make available specific business conduct documentation. Most additional documents required under the proposed regulation will be related to the data used to complete standardized financial statements, such as income statements or balance sheet statements, which are used for yearly assessments of firm financial or managerial performance.
- Proposed new § 201.213(a) through (d), "Contracts in the Livestock and Poultry Market," act to increase available information in the marketplace for the efficient discovery of the value (fair compensation rate) of contracts. Under this proposal, GIPSA would collect copies of example contracts from packers and live poultry dealers and make those example contracts available for public viewing on its website. This will increase the amount of information available that will allow sellers to make informed business decisions.
- Proposed new § 202.215(a) and (b), "Suspension of Delivery of Birds," indicates a time requirement for notifying a grower prior to suspension of delivery of birds, including notification of the length of suspension and date delivery will resume. These provisions protect the private property rights structure of a grower by allowing a grower to have adequate notice and make informed decisions on the future use of resources, which may include contract termination.

- Proposed new § 201.218 (a) through (h), “Reasonable Period of Time to Remedy a Breach of Contract,” would delineate rules for contract termination to better protect property rights by allowing a grower to have adequate notice for time to remedy and make informed decisions on the future use of resources, which include contract termination.

*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 Packers and Stockyards Automated System (PSAS) allows 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 PSAS has improved P&SP’s data integrity by integrating data from several systems across multiple data bases into one completely integrated system with all the data residing in one system and database. The system includes data validation and completeness checks that aid in the capturing of more complete data and accurate data. The multi-tiered and web based implementation of PSAS provides 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.

GIPSA is committed to complying with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

In 2008, 90 percent of monthly reports for swine were submitted via the GIPSA Swine Contract Website, with the remaining 10 percent submitted via fax or by mail.

*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.

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

The Census of Agriculture (Census) indicates there are 727 swine contractors. The estimates reveal that about 300 entities had sales of less than \$750,000 in 2007 and would

have been classified as small businesses. Additionally, there were 8,995 hog producers with swine contracts, almost all of these producers would have been classified as small businesses.

For example, the 2007 Census indicates the 437 largest swine contractors (annual sales greater than 5,000 head at an average value of \$5.9 million) accounted for 99 percent of all sales by swine contractors. The situation in general for the nation's 29,632 combined swine producers and poultry growers operating under contract is that they are almost all small businesses with a contract held by one of the top five very large swine or poultry slaughters.

*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.*

It is vital that current data is collected 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. As required by the Paperwork Reduction Act and its implementing regulations, we are specifically requesting comments on whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility, and clarity of the information to be collected; ways to minimize the burden on the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; and the cost to small businesses for records retention (i.e. number of price differentials offered) and submitting different types of contracts.

*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.*

The 60-day comment period is embedded in the proposed rule which was published on June 22, 2010.

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

There are no plans to provide any payments or gifts 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.

There are no questions of a sensitive nature asked for in this collection of information.

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.

See separate spreadsheet (APHIS 71) for breakout of burden hours. Total number of respondents are 1,061. This figure is comprised of 199 poultry companies; 727 swine contractors; 35 swine packers; and 100 written marketing agreements.

#### Methodology Used for Calculating Estimates

##### *Contract Submission Cost Estimate*

Administrative assistant/ personnel/ expenses = \$25/ hr

##### Poultry

Estimated poultry companies = 199 (140 live dealers and 75 processors, 16 are both)  
(burden calculation is based on 5 different poultry contracts)

Estimated number of poultry production agreements = 20,637

Estimated number of types of production agreements = 995 (avg. 5 per entity)

Total burden = 995 x .25 = 248.75 hours

Total Poultry Industry Cost = 248.75 hours x \$25 hr = \$6,219

Swine

Estimated number of swine contractors = 727  
Estimated number of swine packers = 35 (55 plants)  
Estimated number of swine production agreements = 2181 (3 per contractor)  
Estimated number of types of marketing agreements = 570 (10.3 per packing plant)  
Total contracts = 2751  
Total burden = 2751 x .25 = 687.75 hours  
Total Swine Industry Cost = 687.75 hours x \$25 hour = \$17,194

Cattle

Estimated number of cattle marketers and dealers = 4,157  
Estimated number of cattle packers = 259  
Number of production contracts = 0  
Estimated number of types of marketing agreements = 100 (GIPSA has identified 81 unique contract types)  
Total burden = 100 x .25 = 25 hours  
Total Cattle Industry Cost = 25 hours x \$25 hour = \$625

Poultry	\$6,219
Swine	\$17,194
Cattle	\$625

Total industry cost for contract submission = \$24,038

*Analysis Cost Related to Written Business Justification (§ 201.212 c, f & g)*

Per firm cost = \$3,630 (30 hrs x \$25/hr admin wage + 80 hrs x \$36/hr analyst wage)  
Estimate 12 packers for § 201.212 (c), estimate firms accounting for 85% of total market volume or 10 packers for § 201.212 (f), and only live poultry dealers known affected by § 201.212 (g), approximately 14 or 10% of the 140 live poultry dealers.  
Total industry cost for written business justification analysis = \$3,630 x (12+10+14) = \$130,680.

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.*

- (a) There is no start-up cost associated with this collection of information.
- (b) Not applicable.

*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.*

GIPSA anticipates that it will receive 2,846 contracts. These contracts would be reviewed in GIPSA's regional offices by GS-09 level employees making \$24/hour. Each review would take approximately ½ hour to complete. The annualized cost is anticipated to be \$34, 152 [1/2 hour x \$24 x 2,846 contracts = \$34,152].

GIPSA anticipates that all 2,846 contracts would be in compliance except for 1% (28.46) that would warrant investigation. These investigations would be conducted by GIPSA employees at the GS-12/13 levels making an average of \$39 per hour. Each investigation would take approximately 80 hours to complete. The annualized cost is anticipated to be \$88,795 [\$39 x 80 hours x 28.46 contracts = \$88,795].

GIPSA anticipates that the total annualized cost to the Federal government would be \$122,947.

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

This is a new request.

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

GIPSA does not plan on developing statistics, reports, or other items summarizing the results of analysis of the collection of information.

*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.*

No forms are required.

*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.