

2021 SUPPORTING STATEMENT

Transparency in Poultry Grower Contracting and Tournaments Packers and Stockyards Division OMB NO. 0581-NEW

Note to reviewer – Once approved this collection will be added to our current collection of forms OMB # 0581-0308 and this package will be discontinued

As the Packers and Stockyards Division (PSD) under the Fair Trade Practice Program (FTPP) of the Agricultural Marketing Service (AMS), 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 disclosures of information by live poultry dealers, and the records to be furnished to poultry growers and sellers.

A. Justification.

- 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 the Packers and Stockyards Division (PSD) 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 PSD will consider in determining whether a live poultry dealer has provided prescribed documents to a prospective or current poultry grower as follows:

Specifically, PSD proposes to amend the regulations under the P&S Act by amending and adding the following sections

§201.100 –Records to be furnished poultry growers and sellers

Proposed amended regulation text below:

(a) *Obligation to furnish information and documents.* A live poultry dealer must provide prescribed documents to a prospective or current poultry grower as follows:

- (1) When a live poultry dealer seeks to renew, revise, or replace an

existing poultry growing arrangement that does not contemplate modifications to the existing housing specifications, the live poultry dealer must provide the following documents at least seven days before the live poultry dealer executes the poultry growing arrangement:

(i) A true, written copy of the renewed, revised, or replacement poultry growing arrangement, and

(ii) The Live Poultry Dealer Disclosure Document, as described in paragraphs (b) and (c), or as appropriate paragraph (d), of this section.

(2) When a live poultry dealer seeks to enter a poultry growing arrangement with a poultry grower that will require an original capital investment, the live poultry dealer must provide the following to the poultry grower simultaneously with the housing specifications:

(i) A copy of the poultry growing arrangement that is affiliated with the current housing specifications,

(ii) The Live Poultry Dealer Disclosure Document, as described in paragraphs (b) and (c), or as appropriate paragraph (d), of this section, and

(iii) A letter of intent that can be relied upon to obtain financing for the original capital investment.

(3) When a live poultry dealer seeks to offer or impose modifications to existing housing specifications that could reasonably require a current poultry grower to make an additional capital investment, the live poultry dealer must provide the following to the poultry grower simultaneously with the modified housing specifications:

(i) A copy of the poultry growing arrangement that is affiliated with the modified housing specifications,

(ii) The Live Poultry Dealer Disclosure Document, as described in paragraphs (b) and (c), or as appropriate paragraph (d), of this section, and

(iii) A letter of intent that can be relied upon to obtain financing for the additional capital investment.

(b) Prominent Disclosures. The Live Poultry Dealer Disclosure Document must include a cover page or pages followed by additional disclosures as required in paragraphs (c) and either (d) or (e) of this section. The order, form, and content of the cover page(s) shall be and include:

(1) The title “LIVE POULTRY DEALER DISCLOSURE DOCUMENT” in capital letters and bold type;

(2) The live poultry dealer's name, type of business organization, principal business address, telephone number, and, if applicable, email address and primary internet webpage address;

(3) The length of the term of the poultry growing arrangement;

(4) The following statement: “The income from your poultry farm may be significantly affected by the number of flocks placed on your farm each

year, the density or number of birds placed with each flock, and the target weight at which poultry is caught. The poultry company may have full discretion and control over these and other factors. The poultry company may have full discretion and control over these factors.”

(5) The following:

- (i) The minimum number of placements on the poultry grower’s farm annually under the terms of the poultry growing arrangement,
- (ii) The minimum stocking density or number of birds that will be placed on the poultry grower’s farm with each flock under the terms of the poultry growing arrangement.

(6) The applicable of the following two statements:

(i) “This disclosure document summarizes certain provisions of your poultry growing arrangement and other information. You have the right to read this disclosure document and all accompanying documents carefully. The live poultry dealer is required to provide this disclosure document to you with a copy of the poultry growing arrangement that does not contain new or modified housing specifications that would require you to make an original or additional capital investment at least seven calendar days before the live poultry dealer executes the poultry growing arrangement.” OR

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

(7) This statement: “The terms of your poultry growing arrangement will govern your relationship with the company. Notwithstanding any confidentiality provision in the poultry growing arrangement, you have the right to discuss the terms of the poultry growing arrangement and the Live Poultry Dealer Disclosure Document with a Federal or State agency, your financial advisor or lender, your legal advisor, your accounting services representative, other growers for the same live poultry dealer, and a member of your immediate family or business associate. A business associate is a person not employed by you, but with whom you have a valid business reason for consulting when entering into or operating under a poultry growing arrangement.” and

(8) The following sentence in bold type: “Note that USDA has not verified the information contained in this document. However, if it contains any false or misleading statement or a material omission, a violation of federal and/or state law may have occurred.”

(c) *Required disclosures following the cover page.* The live poultry dealer shall disclose the following information in the Live Poultry Dealer Disclosure Document following the cover page.

- (1) A summary of litigation over the prior six years between the live poultry dealer and any poultry grower; including each individual action, its location, the initiating party, a brief description of the controversy, and any resolution.
- (2) A summary of all bankruptcy filings in the prior six years by the live poultry dealer and any parent, subsidiary, or related entity of the live poultry dealer; and
- (3) A statement that describes the live poultry dealer's policies and procedures regarding the potential sale of the poultry grower's farm or assignment of the poultry growing arrangement to another party.

(d) *Financial Disclosures.* Unless the live poultry dealer is subject to the provisions of paragraph (e) of this section, the live poultry dealer must disclose the following information in the Live Poultry Dealer Disclosure Document:

- (1) Statements or graphic illustrations providing the average annual gross payments to poultry growers under contract with the local complex with the same housing specifications. The required payment information must cover the five previous calendar years at five distinct performance levels on the basis of U.S. dollars per facility square foot, as follows:
 - (i) Annual gross payments for growers in the 50th percentile.
 - (ii) Annual gross payments for growers in the 75th percentile.
 - (iii) Annual gross payments for growers in the 25th percentile.
 - (iv) Annual gross payments for growers in the 90th percentile.
 - (v) Annual gross payments for growers in 10th percentile
- (2) If poultry housing specifications for poultry growers under contract with the local complex are modified such that an additional capital investment may be required and/or if the five-year averages provided under paragraph (1) do not accurately represent grower gross annual payments under the terms of the applicable poultry growing arrangement, the live poultry dealer must provide grower gross annual payment projections based on information the dealer possesses that:
 - (i) Explain why the annual gross payment averages for the previous five years do not provide an accurate representation; and
 - (ii) Show gross grower annual payment projections for the term of the poultry growing arrangement at the five performance percentiles identified in paragraph (1).
- (3) If a live poultry dealer collects information relating to grower variable costs inherent to poultry production, it will provide a summary of that information to poultry growers.
- (4) A live poultry dealer must provide poultry growers with current contact information for the State university extension service office or the county farm advisor's office that can provide relevant information about

poultry grower costs and poultry farm financial management in the poultry grower's geographic area.

(e) *Small Live Poultry Dealer Financial Disclosures.* A live poultry dealer with one or fewer slaughtering facilities and/or slaughtering fewer than 2 million live pounds of poultry weekly (104 million pounds annually) may provide, in lieu of the disclosures required in paragraph (d) of this section, a simplified financial disclosure that must include the annual gross payments for poultry growers under contract with the local complex with the same housing specifications for the three previous years on a US-dollars-per-farming facility square-foot basis.

(f) *Governance and Certification.*

(1) The live poultry dealer must establish, maintain, and enforce a governance framework (the "governance framework") that is reasonably designed to—

(i) audit the accuracy and completeness of the disclosures, which shall include audits and testing, and which shall include reviews of an appropriate sampling of Disclosure Documents by the principal executive officer or officers;

(ii) ensure compliance with all obligations under the Packers and Stockyards Act and regulations thereunder.

(2) The principal executive officer or officers, or persons performing similar functions, shall certify in the Live Poultry Dealer Disclosure Document that the live poultry dealer has established, maintains, and enforces the governance framework and that based on the officer's knowledge, the Disclosure Document does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading.

(g) *Receipt by growers.*

(1) The Live Poultry Dealer Disclosure Document must include a poultry grower's signature page that contains the following statement: "If the live poultry dealer does not deliver this disclosure document within the time frame specified herein, or if this disclosure document contains any false or misleading statement or a material omission, a violation of federal and state law may have occurred. Violations of federal and state laws may be determined to be unfair, unjustly discriminatory, or deceptive and unlawful under the Packers and Stockyards Act, as amended. Allegations of such violations may be reported to the Packers and Stockyards Division of USDA's Agricultural Marketing Service."

(2) The live poultry dealer must obtain the poultry grower's dated signature on the poultry grower's signature page in paragraph (1) as evidence of receipt. The live poultry dealer must provide a copy of the dated signature page to the grower and must retain a copy of the dated

signature page in the dealer's records for three years following expiration or non-renewal of the poultry growing arrangement.

(h) *Right to discuss the terms of poultry growing arrangement offer.* The live poultry dealer, notwithstanding any confidentiality provision in the poultry growing arrangement, may not prohibit poultry growers from discussing the terms of a poultry growing arrangement offer or the accompanying Live Poultry Dealer Disclosure Document with:

- (1) A Federal or State agency;
- (2) The grower's financial advisor or lender;
- (3) The grower's legal advisor;
- (4) An accounting services representative hired by the grower;
- (5) Other growers for the same live poultry dealer; or
- (6) A member of the grower's immediate family or a business associate. A business associate is a person not employed by the grower, but with whom the grower has a valid business reason for consulting when entering into or operating under a poultry growing arrangement.

(i) *Contracts; contents.* Each live poultry dealer that enters into a poultry growing arrangement with a poultry grower shall furnish the grower with a true written copy of the poultry growing arrangement, which shall clearly specify:

- (1) The duration of the contract and conditions for the termination of the contract by each of the parties;
- (2) The following variables controlled by the live poultry dealer:
 - (i) The minimum number of placements of poultry on the poultry grower's farm annually, and
 - (ii) The minimum stocking density or number of birds that will be placed on the poultry grower's farm with each flock.
- (3) All terms relating to the payment to be made to the poultry grower, including among others, where applicable, the following:
 - (i) The party liable for condemnations, including those resulting from plant errors;
 - (ii) The method for figuring feed conversion ratios;
 - (iii) The formula or method used to convert condemnations to live weight;
 - (iv) The per unit charges for feed and other inputs furnished by each party; and
 - (v) The factors to be used when grouping or ranking poultry growers; and
- (4) Whether a performance improvement plan exists for that grower, and if so, specify any performance improvement plan guidelines, including the following:
 - (i) The factors considered when placing a poultry grower on a performance improvement plan;

- (ii) The guidance and support provided to a poultry grower while on a performance improvement plan; and
- (iii) The factors considered to determine if and when a poultry grower is removed from the performance improvement plan and placed back in good standing, or when the poultry growing arrangement will be terminated.

(j) *Settlement sheets; contents; supporting documents.* Each live poultry dealer, who acquires poultry pursuant to a contract with a poultry grower, shall prepare a true and accurate settlement sheet (final accounting) and furnish a copy thereof to the poultry grower at the time of settlement. The settlement sheet shall contain all information necessary to compute the payment due the poultry grower. For all such arrangements in which the weight of birds affects payment, the settlement sheet shall show, among other things, the number of live birds marketed, the total weight and the average weight of the birds, and the payment per pound.

(k) *Condemnation and grading certificates.* Each live poultry dealer, who acquires poultry pursuant to a contract with a poultry grower which provides that official U.S. Department of Agriculture condemnations or grades, or both, are a consideration affecting payment to the grower, shall obtain an official U.S. Department of Agriculture condemnation or grading certificate, or both, for the poultry and furnish a copy thereof to the poultry grower prior to or at the time of settlement.

(l) *Live poultry purchases.* Each live poultry dealer who purchases live poultry shall prepare and deliver a purchase invoice to the seller at time of settlement. The purchase invoice shall contain all information necessary to compute payment due the seller. When U.S. Department of Agriculture condemnations or U.S. Department of Agriculture grades, or both, of poultry purchased affect final payment, copies of official U.S. Department of Agriculture condemnation certificates or grading certificates, or both, shall be furnished to the seller at or prior to the time of settlement.

(m) *Written termination notice; furnishing, contents.*

(1) A live poultry dealer that ends a poultry growing arrangement with a poultry grower due to a termination, non-renewal, or expiration and subsequent non-replacement of a poultry growing arrangement shall provide the poultry grower with a written termination notice at least 90 days prior to the termination of the poultry growing arrangement. Written notice issued to a poultry grower by a live poultry dealer regarding termination shall contain the following:

- (i) The reason(s) for termination;
- (ii) When the termination is effective; and
- (iii) Appeal rights, if any, that a poultry grower may have with the live poultry dealer.

(2) A live poultry dealer's poultry growing arrangement with a poultry grower shall also provide the poultry grower with the opportunity to terminate its poultry growing arrangement in writing at least 90 days prior to the termination of the poultry growing arrangement.

(Approved by the Office of Management and Budget under control number 0580-0015)

§201.214 Transparency and fairness in poultry grower ranking pay systems –
Proposed new regulation text below:

(a) *Poultry grower ranking system records.* If a live poultry dealer calculates payment under a poultry growing arrangement based on a poultry grower's performance relative to other growers (a poultry grower ranking system), the distribution of inputs provided by the live poultry dealer must be transparent to grower participants in accordance with paragraph (b) of this section. A live poultry dealer paying a poultry grower in a poultry grower ranking system must maintain records that show how inputs were distributed among participants within the poultry grower ranking system in accordance with paragraph (c) of this section. Such records must be maintained for a period of five years.

(b) *Placement Disclosure:* Within 24 hours of flock delivery to a grower's farm, a live poultry dealer must provide the following factual information regarding the flock delivered to the grower.

- (1) Stocking density expressed as the number of poultry per facility square foot;
- (2) All ratios of breeds of the poultry delivered;
- (3) All ratios of male and female poultry delivered, unless poultry is straight-run;
- (4) A distinct breeder farm identifier;
- (5) The age of the breeder flock that produced the poultry delivered to the grower; and
- (6) Information regarding any known health impairments of the breeder flock and/or poultry delivered.

(c) *Grouping or ranking sheets and settlement disclosures.* Poultry grower ranking system settlement documents must provide the following information to all grower participants.

- (1) *Grouping or ranking sheets.* Where the contract between the live poultry dealer and the poultry grower provides for payment to the poultry grower based upon a grouping or ranking of poultry growers delivering poultry during a specified period, the live poultry dealer shall furnish the poultry grower, at the time of settlement, a copy of a grouping or ranking sheet that shows the grower's precise position in the grouping or ranking sheet for that period. The grouping or ranking sheet need not show the names of other growers but shall show the actual figures upon which the

grouping or ranking is based for each grower grouped or ranked during the specified period.

(2) Inputs. The grouping or ranking sheets required in paragraph (1) must disclose the following information relating to live poultry dealer-controlled inputs provided to each grower participant:

- (i) Stocking density at each placement expressed as number of birds per facility square foot;
- (ii) All ratios of breeds of the poultry delivered to each poultry grower's farm;
- (iii) All ratios of male and female poultry, other than straight-run, delivered to each individual poultry grower's farm;
- (iv) The average age of the breeder flock(s) on the breeder farm(s) that supplied the poultry delivered to each individual poultry grower's farm;

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 requires includes providing the necessary Live Poultry Dealer Disclosure document to all regulated Live Poultry Dealers and identifying the necessary disclosure information that must be provided by the Live Poultry Dealers to their respective growers under specific conditions, stated below:

(1) When a live poultry dealer seeks to renew, revise, or replace an existing poultry growing arrangement that does not contemplate modifications to the existing housing specifications, the live poultry dealer must provide the following documents at least seven days before the live poultry dealer executes the poultry growing arrangement:

- (i) A true, written copy of the renewed, revised, or replacement poultry growing arrangement, and
- (ii) The Live Poultry Dealer Disclosure Document,

(2) When a live poultry dealer seeks to enter a poultry growing arrangement with a poultry grower that will require an original capital investment, the live poultry dealer must provide the following to the poultry grower simultaneously with the housing specifications:

- (i) A copy of the poultry growing arrangement that is affiliated with the current housing specifications,
- (ii) The Live Poultry Dealer Disclosure Document, and
- (iii) A letter of intent that can be relied upon to obtain financing for the original capital investment.

(3) When a live poultry dealer seeks to offer or impose modifications to existing housing specifications that could reasonably require a current poultry grower to

make an additional capital investment, the live poultry dealer must provide the following to the poultry grower simultaneously with the modified housing specifications: (

- ii) The Live Poultry Dealer Disclosure Document, and
- (iii) A letter of intent that can be relied upon to obtain financing for the original capital investment.

The Live Poultry Dealers will provide the Live Poultry Dealer Disclosure form to the poultry growers multiple times each year poultry as growing arrangements are revised, renewed, replaced or housing arrangements are modified.

The resulting disclosure information provided to each grower will only be accessible to the PSD in the event of investigation of the subject firm during the review of the firm's records.

- 3. DESCRIBE WHETHER, AND TO WHAT EXTENT, THE COLLECTION OF INFORMATION INVOLVES THE USE OF AUTOMATED, ELECTRONIC, MECHANICAL, OR OTHER TECHNOLOGICAL COLLECTION TECHNIQUES 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 Live Poultry Dealer Disclosure form to be used by the Live Poultry Dealers will be available for download on the PSD website.

- 4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION. SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN ITEM 2 ABOVE.**

The information the 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 (ITEM 5 OF THE OMB FORM 83-1), DESCRIBE THE 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 Small Live Poultry Dealers, including all parent and subsidiary companies, slaughtering fewer than 2 million

live pounds of poultry weekly (104 million pounds annually) may provide, in lieu of the disclosures required in paragraph (c) of this section, a simplified financial disclosure that must include the annual gross payments for poultry growers under contract with the local complex with the same housing specifications for the three previous years on a US dollars per farming facility square foot basis.

Based on our records, 89 Live Poultry Dealers are operating. Of those live poultry dealers, we have identified 52 of the entities as small businesses.

6. DESCRIBE THE CONSEQUENCE 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 BURDEN.

It is vital that current data is collected so that fair and equitable marketing practices are exhibited.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES THAT WOULD CAUSE AN INFORMATION COLLECTION TO BE CONDUCTED IN A MANNER:

-REQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY;

-REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;

-REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;

-REQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN 3 YEARS;

-IN CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;

-REQUIRING THE USE OF A STATISTICAL DATA CLASSIFICATION THAT HAS NOT BEEN REVIEWED AND APPROVED BY OMB;

-THAT INCLUDES A PLEDGE OF CONFIDENTIALITY THAT IS NOT SUPPORTED BY AUTHORITY ESTABLISHED IN STATUE OR REGULATION, THAT IS NOT SUPPORTED BY DISCLOSURE AND DATA SECURITY POLICIES THAT ARE CONSISTENT WITH THE PLEDGE, OR WHICH UNNECESSARILY IMPEDES SHARING OF DATA WITH OTHER AGENCIES FOR COMPATIBLE CONFIDENTIAL USE; OR

-REQUIRING RESPONDENTS TO SUBMIT PROPRIETARY TRADE SECRET, OR OTHER CONFIDENTIAL INFORMATION UNLESS THE AGENCY CAN DEMONSTRATE THAT IT HAS INSTITUTED PROCEDURES TO PROTECT THE INFORMATION'S CONFIDENTIALITY TO THE EXTENT PERMITTED BY LAW.

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5CRF 1320.5.

- 8. IF APPLICABLE, PROVIDE A COPY AND IDENTIFY THE DATE AND PAGE NUMBER OF PUBLICATION IN THE FEDERAL REGISTER OF THE AGENCY'S NOTICE, REQUIRED BY 5 CFR 1320.8(d), SOLICITING COMMENTS ON THE INFORMATION COLLECTION PRIOR TO SUBMISSION TO OMB. SUMMARIZE PUBLIC COMMENTS RECEIVED IN RESPONSE TO THAT NOTICE AND DESCRIBE ACTIONS TAKEN BY THE AGENCY IN RESPONSE TO THESE COMMENTS. SPECIFICALLY ADDRESS COMMENTS RECEIVED ON COST AND HOUR BURDEN.**

On June 8, 2022, Vol. No. 87, No. 110, page 34980 and page 38414, the agency published two notices of information collection and request for comments in the Federal Register. The expiration date for comments on Transparency in Poultry Growing Contracting and Tournaments is August 8, 2022. The expiration date for comments on Poultry Growing Tournament Systems: Fairness and Related Concerns, is September 7, 2022

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 FORMAT (IF ANY), AND ON THE DATA ELEMENTS TO BE RECORDED, DISCLOSED, OR REPORTED.

The response below should go here.

The Competition Unit has reviewed past contract data from live poultry dealers and determined an historical lack of transparency and incomplete contracts in poultry contracting. Proposed regulations §§ 201.100 and 201.214 will require live poultry dealers to disclose more and potentially valuable information to growers regarding the placement of flocks, and disclosing information prior to growers entering into new contracts, renewing existing contracts, or the requirement to make additional capital investments.

CONSULTATION WITH REPRESENTATIVES OF THOSE FROM WHOM INFORMATION IS TO BE OBTAINED OR THOSE WHO MUST COMPILE RECORDS SHOULD OCCUR AT LEAST ONCE EVERY 3 YEARS -- EVEN IF THE COLLECTION OF INFORMATION ACTIVITY IS THE SAME AS IN PRIOR PERIODS. THERE MAY BE CIRCUMSTANCES THAT MAY PRECLUDE CONSULTATION IN A SPECIFIC SITUATION. THESE CIRCUMSTANCES SHOULD BE EXPLAINED.

The response should also include a reference to three individuals or organizations, outside of USDA (this is mandatory by OMB) who are either respondents or interested parties in the collection that have been consulted about the burden estimate and other characteristics (i.e., frequency, clarity of instructions) of the collection. The individual contacts should be different from the last submission. If any comments are received, they should be summarized. The reference should include an accurate telephone number for OMB to use in case contact with the public is desired. This requirement especially applies to collections which have been ongoing for more than three years.

PSD conducted no outside consults regarding this information.

9. EXPLAIN ANY DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS, OTHER THAN REMUNERATION OF CONTRACTORS OR GRANTEEES.

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 Packers & Stockyards Act are considered confidential and protected under the Freedom of Information Act. Information on individual firms is not released. Any Packers and Stockyards Division 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 OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE. THIS 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 WHOM 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.** *This is a two-part question and both parts must be addressed.*

THE STATEMENT SHOULD:

- INDICATE THE NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, ANNUAL HOUR BURDEN, AND AN EXPLANATION OF HOW THE BURDEN WAS ESTIMATED. UNLESS DIRECTED TO DO SO, AGENCIES SHOULD NOT CONDUCT SPECIAL SURVEYS TO OBTAIN INFORMATION ON WHICH TO BASE HOUR BURDEN ESTIMATES. CONSULTATION WITH A SAMPLE (FEWER THAN 10) OF POTENTIAL RESPONDENTS IS DESIRABLE. IF THE HOUR BURDEN ON RESPONDENTS IS EXPECTED TO VARY WIDELY BECAUSE OF DIFFERENCE IN ACTIVITY, SIZE, OR COMPLEXITY, SHOW THE RANGE OF ESTIMATED HOUR BURDEN, AND EXPLAIN THE REASONS FOR THE VARIANCE. GENERALLY, ESTIMATES SHOULD NOT INCLUDE BURDEN HOURS FOR CUSTOMARY AND USUAL BUSINESS PRACTICES.

The respondents will provide disclosure documentation to each of their respective poultry growers. There are currently 89 Live Poultry dealers. The number of responses for the combined 201.100 and 201.214 regulations will be 55,091. The cost to the public was determined by multiplying the total number of burden hours by the wages per hour rate.

The Live Poultry Disclosure Document will be provided to poultry growers multiple times each year, whenever a new growing arrangement

is enacted with growers.

Number of large poultry dealers by SBA definition – 54

Number of small poultry dealers by SBA definition – 35

The combined costs to live poultry dealers for compliance with the reporting and recordkeeping requirements of proposed §§ 201.100 and 201.214 are expected to be \$2,436,964 in the first year, and \$ 733,609 in subsequent years. The total hours estimated for the live poultry dealers to create, produce, and distribute these documents are 29,346 in the first year, and 9,267 in subsequent years.

P&SD estimated that the average hourly wage rates as follows \$83.04

The hourly wages as quoted above were derived from averaging out the labor costs divided between management, legal, admin, and IT employees, as provided by USDA Competition Unit.

- IF THIS REQUEST FOR APPROVAL COVERS MORE THAN ONE FORM, PROVIDE SEPARATE HOUR BURDEN ESTIMATES FOR EACH FORM AND AGGREGATE THE HOUR BURDENS IN ITEM 13 OF OMB FORM 83-I.

PSD has created only one form, PSD-6100, to be used by the Live Poultry Dealers when providing disclosure documents to each of their respective poultry growers. All other documents provided to the growers, including the above mentioned Live Poultry Dealer Disclosure document, a copy of the poultry growing arrangement, and a letter of intent that can be relied upon to obtain financing for original or additional capital investment. These additional documents are generated and provided by the Live Poultry Dealers.

13. PROVIDE AN ESTIMATE 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 ESTIMATE 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. THE ESTIMATES SHOULD TAKE INTO ACCOUNT COSTS ASSOCIATED WITH GENERATING, MAINTAINING, AND

DISCLOSING OR PROVIDING THE INFORMATION. INCLUDE DESCRIPTIONS OF METHODS USED TO ESTIMATE MAJOR COST FACTORS INCLUDING SYSTEM AND TECHNOLOGY ACQUISITION, EXPECTED USEFUL LIFE OF CAPITAL EQUIPMENT, THE DISCOUNT RATE(S), AND THE TIME PERIOD OVER WHICH COSTS WILL BE INCURRED. CAPITAL AND START-UP COSTS INCLUDE, AMONG OTHER ITEMS, PREPARATIONS FOR COLLECTING INFORMATION SUCH AS PURCHASING COMPUTERS AND SOFTWARE; MONITORING, SAMPLING, DRILLING AND TESTING EQUIPMENT; AND RECORD STORAGE FACILITIES.

- **IF COST ESTIMATES ARE EXPECTED TO VARY WIDELY, AGENCIES SHOULD PRESENT RANGES OF COST BURDENS AND EXPLAIN THE REASONS FOR THE VARIANCE. THE COST OF PURCHASING OR CONTRACTING OUT INFORMATION COLLECTION SERVICES SHOULD BE A PART OF THIS COST BURDEN ESTIMATE. IN DEVELOPING COST BURDEN ESTIMATES, AGENCIES MAY CONSULT WITH A SAMPLE OF RESPONDENTS (FEWER THAN 10), UTILIZE THE 60-DAY PRE-OMB SUBMISSION PUBLIC COMMENT PROCESS AND USE EXISTING ECONOMIC OR REGULATORY IMPACT ANALYSIS ASSOCIATED WITH THE RULEMAKING CONTAINING THE INFORMATION COLLECTION, AS APPROPRIATE.**

- **GENERALLY, ESTIMATES SHOULD NOT INCLUDE PURCHASES OF EQUIPMENT OR SERVICES, OR PORTIONS THEREOF, MADE: (1) PRIOR TO OCTOBER 1, 1995, (2) TO ACHIEVE REGULATORY COMPLIANCE WITH REQUIREMENTS NOT ASSOCIATED WITH THE INFORMATION COLLECTION, (3) FOR REASONS OTHER THAN TO PROVIDE INFORMATION OR KEEPING RECORDS FOR THE GOVERNMENT, OR (4) AS PART OF CUSTOMARY AND USUAL BUSINESS OR PRIVATE PRACTICES.**

There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection.

- 14. PROVIDE ESTIMATES OF ANNUALIZED COST TO THE FEDERAL GOVERNMENT. ALSO, PROVIDE A DESCRIPTION OF THE METHOD USED TO ESTIMATE COST, WHICH SHOULD INCLUDE QUANTIFICATION OF HOURS, OPERATION EXPENSES (SUCH AS EQUIPMENT, OVERHEAD, PRINTING, AND SUPPORT STAFF), AND**

ANY OTHER EXPENSE THAT WOULD NOT HAVE BEEN INCURRED WITHOUT THIS COLLECTION OF INFORMATION. AGENCIES ALSO MAY AGGREGATE COST ESTIMATES FROM ITEMS 12, 13, AND 14 IN A SINGLE TABLE.

There are no additional actual costs the agency will incur as a result of implementing the information collection.

- 15. EXPLAIN THE REASON FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-1.**

This is a new form being used by our Live Poultry Dealers to provide the required disclosure information as required by our updated and new regulations. There is no previous reporting to compare.

- 16. FOR COLLECTIONS OF INFORMATION WHOSE RESULTS WILL BE PUBLISHED, OUTLINE PLANS FOR TABULATION, AND PUBLICATION. ADDRESS ANY COMPLEX ANALYTICAL TECHNIQUES THAT WILL BE USED. PROVIDE THE TIME SCHEDULE FOR THE ENTIRE PROJECT, INCLUDING BEGINNING AND ENDING DATES OF THE COLLECTION OF INFORMATION, COMPLETION OF REPORT, PUBLICATION DATES, AND OTHER ACTIONS.**

There are no plans to publish the information obtained through this collection. Packers and Stockyards Division personnel will only view the data provided by the Live Poultry Dealer to their respective growers if it is part of a review of information completed on subject entities.

- 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.**

When OMB approves the collection, AMS will add the appropriate expiration date that appears on the Notice of Action completing the approval and renewal.

- 18. EXPLAIN EACH EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19, "CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS," OF OMB FORM 83-1.**

The agency is able to certify compliance with all provisions under Item 19 of OMB Form 83-1."

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

THE AGENCY SHOULD BE PREPARED TO JUSTIFY ITS DECISION NOT TO USE STATISTICAL METHODS IN ANY CASE WHERE SUCH METHODS MIGHT REDUCE BURDEN OR IMPROVE ACCURACY OF RESULTS. WHEN ITEM 17 ON THE FORM OMB 83-1 IS CHECKED "YES", THE FOLLOWING DOCUMENTATION SHOULD BE INCLUDED IN THE SUPPORTING STATEMENT TO THE EXTENT THAT IT APPLIES TO THE METHODS PROPOSED.

The information collection does not employ statistical methods.