

2022 SUPPORTING STATEMENT

FarmerFairness.gov USDA/DOJ complaint web portal

OMB NO. 0581-0333

NOTE to reviewer: Once this package is approved, we will be merging this form with our current forms collection 0581-0308.

A. Justification.

1. EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY. IDENTIFY ANY LEGAL OR ADMINISTRATIVE REQUIREMENTS THAT NECESSITATE THE COLLECTION.

On July 9, 2021, the President issued Executive Order 14036, “Promoting Competition in the American Economy” to combat high industry concentration and restore fair and competitive markets. The Departments of Agriculture (USDA) and Justice (DOJ) are standing up a web portal to allow any person having a complaint against the livestock industry to communicate their concerns with proper officials. The joint USDA/DOJ web portal will be located at FarmerFairness.gov.

The Packers and Stockyard (P&S) Act, 1921, as supplemented and amended (7 U.S.C. 181-229c), authorizes the Secretary of Agriculture to direct the following:

- a. The Agricultural Market Service (AMS), Fair Trade Practices Program’s (FTPP) Packers and Stockyards Division (PSD), administers and enforces the P&S Act, which requires regulated entities in the livestock, meat packing, and poultry industries to keep records, submit information to PSD, and provide information to third parties. The regulated entities are packers, swine contractors, live poultry dealers, stockyard owners, market agencies, and dealers. In general, the information required includes identifying, descriptive, procurement, and financial information and certifications (7 U.S.C 181-229c).
- b. 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, PSD provide guidelines for members of the livestock, meat packing, and poultry industries.

Through the regulations in 9 CFR, Part 201 (the regulations), PSD implements 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 USDA, records to be kept, and information to be disclosed to third parties.

- c. Through enforcement of the P&S Act, PSD regulates 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. The P&S Act also protects members of the livestock and poultry marketing, processing, and merchandising industries from unfair competitive practices.
- d. 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.
- e. Section 309(a) of the P&S Act (7 U.S.C. 210(a)) requires complaint(s) to be submitted in writing and requires the stockyard owner, market agency, or dealer against whom the complaint was made to either satisfy the complaint(s) (make reparation) or to answer the complaint(s) in writing.
- f. Section 402 of the P&S Act (7 U.S.C. 222) incorporates by reference sections 6, 8, 9, and 10 of the Federal Trade Commission (FTC) Act, as amended (15 U.S.C. 41-58) under 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:
 - 1. 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))

2. Requiring corporations to file annual and special reports or written answers to specific questions to furnish the required information. (Section 6, paragraph (b))
3. 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))
4. 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)
5. Providing the Agency or its duly authorized agent or agents, at all reasonable times 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)
6. 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)

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 assist PSD 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 PSD or, when violations of the P&S Act are disclosed, as legal evidence in a formal administrative hearing; and

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

Reporting Requirements – Specific Forms

Complaint – Series 5000

- PSD-5001 – Complaint form

Any person wishing to file a complaint with the Packers and Stockyards Division or Department of Justice may use this form on the joint USDA/DOJ website.

- 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 form in this information collection is part of the AMS Integrated eGovernment Report. AMS 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.

- 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 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 (ITEM 5 OF THE OMB FORM 83-I), 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 number of small entities affected are 1,226 active entities holding a bond/financial instrument of \$20,000 or less.

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.

USDA and DOJ publicly committed in a January 3, 2022, press release to vigorously enforce the laws that protect farmers, ranchers, and other producers and growers from unfair, deceptive, discriminatory, and anticompetitive practices. A key component of this enforcement effort is providing producers and growers a means to report potential violations. Without this collection, enforcement will be hindered.

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;**

- **-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.

If the answer to any subpart is “yes”, then a full explanation of the circumstances surrounding that subpart should be provided. NOTE: If you feel that none of the questions apply, use the example response. If you answered any subpart and other subparts did not apply then insert “other” before “special”. This statement goes after the last subpart.

There are no special circumstances. The recordkeeping/reporting procedures are consistent with the guidelines established under 5 CFR 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.**

During the 60-day comment period which expired June 10, no comments were received as a result of the notice published in the Federal Register on April 11, 2022, (87 FR 21083 copy attached).

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.

No efforts were made to consult with persons outside the agency to obtain their view on the availability of data, frequency of collection, the clarity of instructions, etc. Packers and Stockyards Division's agents are in contact on a daily basis with the industry who deals with Packers and Stockyards Division's forms.

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.

Packers and Stockyards Division's employees, as a part of everyday business operations, attend meetings and are in contact with industry trade groups, associations, State departments of agriculture, farm organizations, and other interested members of the livestock, meat packing, and poultry industries. The P&S Act and regulations are discussed in these forums and information is routinely solicited on the effectiveness of the Packers and Stockyards Division'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 GRANTEEES.

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 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. 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.

Number of respondents – 110

Frequency of response – 1.5

Annual burden hours – 165

Burden hours were determined by experienced PSD 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, PSD regulations, and policy statements and that are not considered usual and customary records.

There is a difference in respondents and hours reported from the initial submission of the supporting statement. It was determined the original estimate of respondents was too low. The numbers reflected in this section correct that information.

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 83.1.

Estimate of the burden of the collection of information has been summarized on the AMS-71.

- PROVIDE ESTIMATES OF ANNUALIZED COST TO RESPONDENTS FOR THE HOUR BURDENS FOR COLLECTIONS OF INFORMATION, IDENTIFYING AND USING APPROPRIATE WAGE RATE CATEGORIES. THE COST OF CONTRACTING OUT OR PAYING OUTSIDE PARTIES FOR INFORMATION COLLECTION ACTIVITIES SHOULD NOT BE INCLUDED HERE. INSTEAD, THIS COST SHOULD BE INCLUDED IN ITEM 14.

The cost to the public was determined by multiplying the total number of burden hours by the wages per hour rate. P&SD estimated that the average hourly wage rate as \$35.12. Therefore, the total cost to the public would be \$35.12 per hour x 165 burden hours per year = \$5,794.80

The hourly wages as quoted above were obtained from the U.S. Department of Labor, Bureau of Labor Statistics News Release, "Occupational Employment and Wages, May 2021," published March 31, 2022 (USDLE-22-0556). This publication can be found at the following website: <http://www.bls.gov/news.release/pdf/ocwage.pdf>. (National estimates for Business and financial operations occupations, Buyers and Purchasing Agents, mean annual wage)

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. The cost estimates cover all entities regardless of region.

- 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.

Estimated Annual Cost to Federal Government to Operate LFPA

Salaries/ Benefits and Compensation/ Awards	\$2,272
Travel	
Contracts/ Services	-
Printing/ Copying/Mailing	-
Rent/ Communication /Utilities	-
Supplies/ Equipment	-
Total	\$2,272

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 collection and there are no comparisons to be made.

The figures in line 14 are the program and overhead costs incurred by the agency for review the complaint. The cost is determined at .40 hours X 110 for 44 hours, times the salary of \$45.73 per hour = \$2,272.

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.

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 agency does not have a problem with the expiration date being displayed on the information collection.

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 information collection does not employ statistical methods.