

2023 SUPPORTING STATEMENT

Poultry Grower Payment Systems and Capital Improvement Systems Under the Packers and Stockyards Act

OMB NO. 0581-NEW

As the Packers and Stockyards Division (PSD) under the Fair Trade Practices 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.

The information collection requirements in this request are essential to improve transparency and forestall deception and unfairness in the use of broiler growing arrangements, in accordance with the purposes of the Packers and Stockyards Act, 1921. Proposed revisions to the Packers and Stockyards regulations would require live poultry dealers (LPDs) establish, maintain, and review written documentation regarding their processes for the operation of a poultry grower ranking system that is consistent with the LPD duty of fair comparison, and provide information disclosures to growers when requesting that growers make additional capital investments. Under the proposal, LPDs would develop and document policies and procedures to meet a duty of fair grower comparison in tournaments and prepare written reports based on internal reviews of compliance conducted not less than once every two years. All LPD documentation will be provided to USDA on request, maintained for no less than five years, and used for ongoing internal compliance activities. The proposed rulemaking would also provide a Capital Improvement Disclosure Document to growers at times when LPDs request that growers make additional capital investments. Poultry growers could review the

disclosure information to make informed business decisions regarding production decisions and financial investments related to broiler production.

- 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.**

Under the proposal, LPDs would develop and document policies and procedures to meet a duty of fair grower comparison in tournaments and prepare written reports based on internal reviews of compliance conducted not less than once every two years. All LPD documentation will be provided to USDA on request, maintained for no less than five years, and used for ongoing internal compliance activities. The proposed rulemaking would also provide a Capital Improvement Disclosure Document to growers at times when LPDs request that growers make additional capital investments. Poultry growers could review the disclosure information to make informed business decisions regarding production decisions and financial investments related to broiler production.

- 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 collection of information will be performed using information collected manually through the investigative process by agents of AMS.

The 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 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.

Proposed Rules 201.110 and 201.112 cover all livestock poultry dealers. The costs associated for small live poultry dealers are similar, but smaller than the preferred option. According to PSD records, small LPDs make up 47.6 percent of all LPDs, but have only 4.8 percent of poultry growing contracts. The estimation of the costs of the small business exemption alternative will follow the same format as the preferred alternative.

The requests to maintain and provide records are required of all regulated entities covered under the Packers and Stockyards Act.

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 STATUTE 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.**

The proposed rules §§ 201.110 and 201.112 to amend the regulations implementing the P&S Act located in title 9, part 201, of the Code of Federal Regulations (CFR) was published in the Federal Register on June 10, 2024 (89 FR 49002).

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.

To date, 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. PSD's agents are in contact on a daily basis with the industry who deals with PSD's forms.

AMS plans to publish in the Federal Register a proposal to amend the regulations implementing the P&S Act located in 9 Part 201 of the Code of Federal Regulations (CFR by adding a new subpart titled "Poultry Grower Payment Systems and Capital Improvement Systems". AMS plans to solicit public comments on the proposed rule for a period of 60 days.

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'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 PSD'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.

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 (5. U.S.C §552). Information on individual firms is not released. Any PSD employee releasing such information without proper authority is subject to a fine and/or imprisonment as referenced by Section 10 of the F.T.C Act (15 U.S.C. 50) as made applicable by Section 402 of the P&S Act, and §201.96 of the Regulations issued thereunder.

- 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.

There are three sections of the regulations that are addressed in this information collection. Each burden estimate is provided below.

Operation of Broiler Grower Ranking Systems Under § 201.110(b)(1)(i) through (iii) and (b)(2)

Estimate of Burden: Public burden for this collection of information is estimated to average 301.89 hours per response (first year), 220.66 hours per year thereafter.

Respondents: Live poultry dealers.

Estimated Number of Respondents: 42

Estimated Number of Responses: 188

Estimated Number of Responses per Respondent: 4

Estimated Total Annual Burden on Respondents: 56,756 hours in the first year, and 41,484 hours per year thereafter.

Communication and Cooperation Under § 201.110(b)(1)(iv)

Estimate of Burden: Public burden for this collection of information is estimated to average 45.24 hours per response (first year), 16.00 hours per year thereafter.

Respondents: Live poultry dealers.

Estimated Number of Respondents: 42

Estimated Number of Responses: 42

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 1,900 hours in the first year, and 672 hours per year thereafter.

Broiler Grower Capital Improvement Disclosure Document Under § 201.112

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.53 hours per response (first year), 0.53 hours per year thereafter.

Respondents: Live poultry dealers.

Estimated Number of Respondents: 42

Estimated Number of Responses: 990

Estimated Number of Responses per Respondent: 24

Estimated Total Annual Burden on Respondents: 526 hours in the first year, and 526 hours per year thereafter.

The amount of time required to keep records was estimated by AMS subject matter experts. These experts were auditors and supervisors with many years of experience in AMS's Packers and Stockyards Division (PSD) conducting investigations and compliance reviews of regulated entities. AMS used the May 2022 U.S. Bureau of Labor Statistics (BLS) Occupational Employment and Wage

Statistics for the time values in this analysis.¹ BLS estimated an average hourly wage for general and operations managers in animal slaughtering and processing to be \$61.24. The average hourly wage for lawyers in food manufacturing was \$103.81. In applying the cost estimates, AMS marked-up the wages by 41.79 percent to account for fringe benefits.

The combined costs to LPDs for compliance with the recordkeeping and disclosure requirements of proposed §§ 201.110 and 201.112 are expected to be \$5,511,000 in the first year, and \$3,821,000 in subsequent years. The total hours estimated for the LPDs to create, produce, distribute, and maintain these documents are 59,182 in the first year, and 42,682 in subsequent years

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.

There are no forms required for this collection. The Live Poultry Dealers are tasked with maintaining their records to comply with the recordkeeping requirement.

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**

¹ Estimates are available at U.S. Bureau of Labor Statistics. Occupational Employment and Wage Statistics, available at <https://www.bls.gov/oes/special-requests/oesm22all.zip> (accessed 7/14/2023). [Featured OES Searchable Databases: U.S. Bureau of Labor Statistics \(bls.gov\)](#) (accessed July 2023).

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 collection and there are no comparisons to be made.

- 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. PSD personnel will only view the data provided by the Packers, Swine Contractors or Live Poultry Dealer 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.**

There are no forms used with this information collection. All necessary documents will be those provided by the Live Poultry Dealers.

- 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.