

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN: 0580-AB22

Tournament Systems and Compensation.

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA

ACTION: Interim rule with request for comments

SUMMARY: The U.S. Department of Agriculture (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations issued under the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act). GIPSA is amending the regulations in response to comments and other public input received in response to the proposed rule published in the *Federal Register* on June 22, 2010 (75 FR 35338), making necessary changes. Only proposed Section 201.214, Tournament systems and the associated definition are being finalized by this action. We expect this interim rule to foster a fairer market place.

DATES: *Effective date:* This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. *Comment dates:* We will consider comments received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

This action follows the June 22, 2010, publication of a proposed rule, which included the section being finalized, as amended, by this action. In balancing the need to clarify the regulations with the opportunity for public comment, GIPSA has decided to publish an interim rule with a 60 day period for additional public comment. GIPSA is seeking additional comments on the economic analysis, listed below under the Executive Order 12866 section. This economic analysis was revised per public comment from the economic analysis associated with the June 22, 2010 proposed rule. The studies received as comments during the public comment period for the June 22, 2010 proposed rule had limitations. This was acknowledged by the authors of one of the studies. For this reason, GIPSA is seeking additional comments that may indicate quantifiable estimates of benefits and/or if costs as outlined in the economic analysis appear reasonable. If public comments warrant, the interim rule could be revised.

The supplemental information of this interim rule is composed of three sections. Section I provides a brief history of the rulemaking and presents USDA's position on competitive injury. Section II provides a summary of the comments received on the June 22, 2010, proposed rule and at the relevant USDA/Department of Justice (DOJ) Joint Competition workshops that occurred during the comment period and describes how sections of the proposed rule have been modified based on these comments. Section III provides the revised impact analyses including those required by Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

I. Background**The P&S Act**

The P&S Act was enacted in 1921 “to comprehensively regulate packers, stockyards, marketing agents and dealers.”¹ The P&S Act “was framed in language designed to permit the fullest control of packers and stockyards which the Constitution permits, and its coverage was to encompass the complete chain of commerce and give the Secretary of Agriculture complete regulatory power over packers and all activities connected therewith.”²

The scope of the P&S Act is broad. Section 202 of the P&S Act provides that “[i]t shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:

- Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or
- Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect; or
- Sell or otherwise transfer to or for any other packer, swine contractor, or any live poultry dealer, or buy or otherwise receive from or for any other packer, swine contractor, or any live poultry dealer, any article for the purpose or with the effect of apportioning the supply between any such persons, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly; or
- Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or

¹ *Hays Livestock Comm'n Co. v. Maly Livestock Comm'n Co.*, 498 F.2d 925, 927 (10th Cir. 1974).

² *Bruhn's Freezer Meats of Chicago, Inc. v. USDA*, 438 F.2d 1332, 1339 (8th Cir. 1971) (citing H.R. Rep. No. 67-324 (1921); H.R. Rep. No. 67-77 (1921)).

controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or

- Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or
- Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business, or (2) to apportion purchases or sales of any article, or (3) to manipulate or control prices; or
- Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivisions (a), (b), (c), (d), or (e) of this section.”^{3, 4, 5}

In addition, the P&S Act imposes a variety of more specific limitations and requirements.

In particular, it specifies procedures for a poultry grower or swine production contract grower seeking to cancel a poultry growing arrangement or swine production contract,⁶ requires

³ *See also* sections 2, 201 (defining the statutory terms). Section 202 originally applied only to the livestock and meat packing industries. Live poultry dealers were added in 1935, *see* Pub. L. No. 74-272, 49 Stat. 648 (1935), and swine contractors were added in 2002, Pub. L. No. 107171, § 10502(b)(1), 116 Stat. 134, 509 (2002).

⁴ *See also* sections 312 (Prevention of unfair, discriminatory, or deceptive practices.). Section 312 provides that “[i]t shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock.”

⁵ *See also* section 301, 302 (providing additional definitions); section 304 (providing that “[a]ll stockyard services furnished pursuant to reasonable request made to a stockyard owner or market agency at such stockyard shall be reasonable and nondiscriminatory and stockyard services which are furnished shall not be refused on any basis that is unreasonable or unjustly discriminatory”); section 305 (providing that “[a]ll rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful”); section 307 (“It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful.”).

⁶ *Id.* section 208.

disclosure of additional capital investments in production contracts;⁷ establishes procedures for the use of arbitration;⁸ imposes record-retention requirements;⁹ and requires that certain contracts and rates to be available to the Secretary and the public (without confidential information). The P&S Act further declares that any attempt to delay payment for livestock or poultry is “an ‘unfair practice’ in violation of this chapter.”¹⁰ USDA has a longstanding interpretation that not all violations of the P&S Act require a showing of harm to competition.

The P&S Act provides that “[t]he Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this chapter.”¹¹ The P&S Act also sets forth procedures for administratively adjudicating certain enforcement actions.¹²

Stakeholder Input

In preparing to propose regulatory changes, GIPSA held three public meetings in October 2008, in Arkansas, Iowa, and Georgia to gather comments, information, and recommendations from interested parties. Attendees at these meetings were asked to give input on the elements of the 2008 Farm Bill related to the P&S Act and other issues of concern under the P&S Act.

In 2010, the USDA and the Department of Justice (DOJ) held five joint public workshops to explore competition issues affecting the agriculture industry in the 21st century and the appropriate role for antitrust and regulatory enforcement in that industry. These workshops were held in Ankeny, Iowa (Issues of Concern to Farmers, March 12, 2010); Normal, Alabama (Poultry Industry, May 21, 2010); Madison, Wisconsin (Dairy Industry, June 25, 2010); Fort Collins, Colorado (Livestock Industry, August 27, 2010); and Washington, District of Columbia

⁷ *Id.* section 208.

⁸ *Id.* section 210.

⁹ *Id.* section 401.

¹⁰ *Id.* sections 409, 410.

¹¹ *Id.* section 408.

¹² *Id.* sections 203, 309, 411..

(Margins, December 8, 2010). The Secretary informed attendees of the August 27, 2010, workshop their comments provided that day would be considered as public comments on the June 22, 2010 proposed rule (75 FR 35338). The August 27, 2010, workshop attendees provided comments on concentration in livestock markets, buyer power, and enforcement of the P&S Act. Any relevant comments at the June 25, 2010, workshop were also considered public comments on the proposed rule.

II. Comments and Responses

The proposed rule published on June 22, 2010, (75 FR 35338) provided a 60-day comment period to end on August 23, 2010. In response to requests for an extension of time to file comments, on July 28, 2010, GIPSA extended the comment period to end on November 22, 2010 (75 FR 44163). GIPSA considered all comments postmarked or electronically submitted by November 22, 2010. Over 61,000 comments were received. The following discussion addresses written comments as well as comments received at the June 25, 2010, and August 27, 2010, Workshops on Competition in Agriculture, conducted jointly by USDA and DOJ. Only a portion of the sections of the proposed rule are being finalized at this time.

Definition-Tournament System

Summary of Comments: We received only a few comments regarding the definition of tournament system. The comments either expressed support for the definition or commented on the workings of tournament systems. One commenter stated their understanding was that tournament systems are only used with respect to growing broiler type chickens.

Agency Response: We do not believe the definition should be limited to poultry arrangements involving broiler chickens. Leaving the term more general makes the regulation

flexible to accommodate change in industry norms. No changes were made to this definition based on the comments.

Poultry Tournament Systems

Summary of Comments: We received several comments expressing concern with the use of the tournament system by live poultry dealers to determine payments to poultry growers. Many comments stated that “the tournament system is inherently unfair because all inputs and factors influencing performance and pay are not equal among growers.” Some comments stated that variations in inputs that are provided by the poultry companies, including chicks, feed, medications, etc., have a significant influence on the performance of a grower, but the grower has no control or influence over the quality of those inputs. One poultry grower commented that he had been delivered a flock consisting of a new breed of chicken that did not perform well due to the characteristics of that breed, and that put him at a disadvantage compared to growers with whom he was competing who received a better-performing breed. Another variable pointed out by the comments were how the age of the breeder flocks can affect a grower’s placement in the tournament system. One commenter stated that poultry growers who get all or a higher percentage of chicks from very old or very young breeder hens are at a disadvantage compared to growers who receive chicks from hens in the prime weeks of laying good eggs.

Supporting comments favored the implementation of this section because it “will help to clarify that base pay should be understood as minimum pay, and not confused with average pay when a tournament system is used.” Additionally, we received comments stating that poultry houses that are similar and of the same type should be settled together. Several comments focused on the issue that currently all different types of houses are ranked together, but growers with the older, non-premium houses are paid a lower rate per pound even if they out-perform

growers with new or premium houses. One poultry grower commented that he had built houses in accordance with the company's specifications, but was having difficulty competing with new houses built years later according to new specifications.

Several comments also suggested the rule be re-written to clarify what "same type and kind of poultry" means as well as that pay for above-average performance and/or for investments in new or improved facilities will still be allowed. Comments opposed to this section expressed concern that requiring all growers to be paid the same rate or base pay would eliminate incentive pay for hard work and upgrades and would give that money to growers who do not work as hard and who do not invest in their poultry houses, thereby helping the least productive growers and hurting the most productive growers. Several comments suggested the base pay should reflect a growers cost of production plus a reasonable rate of return and some comments expressed concern that requiring a minimum base pay might result in a lower base pay than provided for in current contracts and be below a growers cost of production. Many comments also suggested the term base pay should be defined.

We also received comments from opponents expressing concerns about ranking "like" houses together. These opponents state that ranking "like" houses together will discourage hard-working growers who invest in their poultry houses and who utilize innovative technology to maintain high performance.

Agency Response: In response to concerns regarding implementation of the base pay provision and confusion over whether it would cover a growers cost of production or would eliminate or reduce performance incentives, we have eliminated this section. In addressing comments that sought further clarification about the "same type and kind of poultry", we have defined that to be poultry that is of the same breed and shares the same target weight range.

With regard to comments seeking clarity on what constitutes “like house types,” we clarified that house type shall be based upon comparable production technology utilized. Examples of different house types might include “conventional house,” a “tunnel ventilation house,” a “cool cell house” or a “black out house”.

Some commenters opposed this rule, stating that GIPSA lacked authority to implement it because it was not covered by the 2008 Farm Bill. GIPSA’s authority to propose this section comes from its general rulemaking authority granted to the Secretary in section 407 of the P&S Act (7 U.S.C. 228).

Further, in the course of its enforcement of the P&S Act, GIPSA has reviewed the records of many live poultry dealers and numerous poultry growing settlement documents. GIPSA has also received complaints from poultry growers regarding how settlements occur. These equity complaints indicate that some live poultry dealers have established pay schedules under which poultry growers that raise and care for the same type and kind of poultry receive different rates of pay and also have improperly grouped together poultry growers who raise and care for poultry in different types of housing for settlement purposes.

Section III. Executive Orders 12866, 13563 and Other Analyses

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This interim rule has a companion final rule which can be found at [INSERT FR CITATION]. This companion final rule provides an extensive discussion of the use of contracts within the agriculture, notably the high share of production under contract within the poultry industry compared to other components of agriculture. The companion final rule also provides a discussion of the role of government oversight.

Economic Assessment

This interim rule contains several significant changes based on the comments received during the comment period for the June 22, 2010 proposed rule.

Benefits

As discussed previously, the June 22, 2010, proposed rule elicited numerous comments in support of the changes. However, few comments provided numerical estimates of the economic benefits of the proposal. Many of the comments favoring the proposed changes pointed to what they viewed as the deleterious effects of increased concentration on competition. This interim rule seeks to remedy potential violations of the P&S Act that may have equity implications through the potential to extract economic rents from producers resulting in a net loss in producer surplus at the gain to processors.

Section 201.214 of this interim rule requires live poultry dealers who pay poultry growers on a tournament system to rank growers in settlement groups with other growers who raise the same type and kind of poultry and in like houses based on comparable technology. For example, comments pointed to increasing trends in concentration and how in many local markets, particularly poultry, producers may have a limited number of outlets to sell their service. This may give buyers increased market power at the expense of producers. Taylor and Domina

attribute the low rates of return in the poultry industry in part to the tournament system of pricing.¹³

Costs

While Section 201.214 improves the equity of the tournament system by grouping like growers, the improvement in equity will have some cost if the adjustment in tournament systems made by live poultry dealers reduces the incentives available to some producers to improve technology. As detailed in the companion final rule, we break out the costs associated with the interim rule into indirect and direct costs. Because indirect costs are associated with changes in industry behavior, to estimate the adjustment costs associated with this interim rule, we rely on comments on the June 22, 2010, proposed rule that systematically described quantitative costs across the rule provisions. The two comments used extensively for the cost-benefit analysis are “An Estimate of the Economic Impact of GIPSA’s Proposed Rules,” (Informa study) prepared for the National Meat Association by Informa Economics, Inc., submitted as Appendix C to the National Cattlemen’s Beef Association, and Appendix D of the National Pork Producers Council comment submissions and “Proposed GIPSA Rules Relating to the Chicken Industry: Economic Impact,” (Elam study) prepared for the National Chicken Council by Thomas. E. Elam, President, FarmEcon LLC.¹⁴ The companion final rule [INSERT FR CITATION] provides a description of the methodologies used by these two studies to estimate direct costs.

¹³ Taylor, C. Robert and David A. Domina. “Restoring Economic Health to Contract Poultry Production.” (Report prepared for Joint US Dept of Justice/USDA Pubic Workshop on Competition Issues in the Poultry Industry, May 21, 2010).

¹⁴ See Elam, Dr, Thomas E. “Proposed GIPSA Rules Relating to the Chicken Industry: Economic Impact.” FarmEcon LLC (November 16, 2010, p. 14); *Comments of Cargill Meat Solutions Corporation* (November 22, 2010, pp 51-52; *Comments of Tyson Foods* (November 18, 2010, p. 71).

We also include direct costs based on GIPSA expertise in administrating the Packers and Stockyards Act such as those associated with the direct costs related to the threat of litigation (such as attorney fees) and administrative costs associated with modifying contracts, maintaining and keeping records and processing required information. GIPSA has data on the actual number of agreements and contracts that would be affected by the proposed rule. Therefore, the GIPSA cost estimates are likely to produce a more representative cost estimate compared to those from a survey.

Because this interim rule is limited to proposed Section 201.214 and the associated definition, the adjustment costs using the Informa study and the Elam study combined with the direct costs as estimated by GIPSA is estimated to be \$22.6 million. For comparison, the total farm value of poultry produced is about \$20 billion each year, the vast majority of which is produced under a tournament system.

Distribution of costs

Based on the distributional assumptions drawn from the Informa study, it is estimated that live poultry dealers would bear approximately 80 percent of the cost increase while producers would bear 20 percent of any cost increases. The share of the cost increases are determined by the substitutability of consumer products. Because there are few low cost alternatives to poultry, consumers would bear a relatively larger share of any potential cost increases. Any price increase in poultry products would likely lead to an increased level of consumption of beef and pork away from poultry leading to indirect benefits to the beef and pork industries.

Options Considered

Alternatives offered in the comments on the proposed rule were carefully considered in determining the content of this interim rule. These comments often took the form of various options for modifying the proposed rule to make a provision clearer, more focused or less burdensome. We also considered the option to take no action, to modify the provision, or to finalize the proposal without modification. The option chosen took into account the comments received and the updated cost and benefit estimates.

Impact on Small Businesses

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 - 612), GIPSA has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). Broiler and turkey producers (NAICS 112320 and 112330) are considered small businesses if their sales are less than \$750,000 per year. Live poultry dealers (NAICS 311615) are considered small businesses if they have fewer than 500 employees. GIPSA also maintains data on live poultry dealers from the annual reports these firms file with GIPSA. Currently, there are 140 live poultry dealers (all but 16 are also poultry slaughterers and would be considered poultry integrators) that would be subject to the interim rule. According to U.S. Census data on County Business Patterns, there were 64 poultry slaughter firms that had more than 500 employees in 2006. The difference yields approximately 75 poultry slaughters/integrators that have fewer than 500 employees and would be considered as small businesses that would be subject to the interim regulation.

An important factor in determining the economic effect of the regulations is the number of contracts held by a firm. Poultry growers enter into a contract with one live poultry dealer, whereas a live poultry dealer may have a number of contracts with many growers. While poultry may have sophisticated growing facilities, many are independent family owned businesses that are focused solely on growing poultry to the specifications outlined in their contracts. Most live poultry dealers, however, are much larger integrated commercial entities that slaughter and process poultry for the retail market. In the case of live poultry dealers, they also engage in breeding and hatching poultry for growout by a contract grower. Given the business size differential between poultry growers and live poultry dealers and the market power that a live poultry dealer may have, the live poultry dealer has access to more information and other business, financial, and legal resources when establishing the terms of and entering into contracts with growers. By contrast, the poultry grower may not have ready access to or can afford to have a staff of financial, business, or legal advisors.

GIPSA records for 2007 indicated that there were 20,637 poultry growing arrangements (contracts) of which 13,216, or 64 percent, were held by the largest 6 live poultry dealers, and 95 percent (19,605) were held by the largest 21 live poultry dealers. These 21 live poultry dealers are all in SBA's large business category, whereas the 19,605 poultry growers holding the other side of the poultry growing arrangement are all small businesses by SBA's definitions. In general, the nation's poultry growers who operate under poultry growing arrangements are almost all small businesses with a poultry growing arrangement held by one of the very large live poultry dealers. To illustrate the magnitude in size differences between the growers and the live poultry dealer, using grower gross sales revenue of \$750,000 per year and the average gross sales revenue of three of these very large live poultry dealers, yields a ratio of roughly 1:23,000.

GIPSA believes that § 201.214 of this interim rule will help promote a level playing field among poultry growers that are compensated by live poultry dealers ranking poultry growers in settlement groups in a tournament system. GIPSA believes that comparisons used to compensate poultry growers should be based on the type and kind of poultry they raise, and the production technology they utilize in raising the poultry. For live poultry dealers to rank poultry growers in any other way, GIPSA believes, could cause economic harm to poultry growers, who are typically small businesses, because the possibility of an ‘apples vs. oranges’ comparison doesn’t allow an accurate comparison of the services they are providing. GIPSA believes that the costs to live poultry dealers of changing existing tournament rankings will be significantly less than the financial benefits to poultry growers and the poultry industry overall. GIPSA also believes that this action will foster greater trust between poultry growers and live poultry dealers since live poultry dealers, by complying with the regulation, can assure the growers that they are being compensated equitably. It is unknown how many live poultry dealers are both small businesses and utilize the tournament system in a way that compares growers who are using different production technologies. This subset of small businesses would be affected by the interim rule and need to make adjustments to how they conduct the tournament system. While we considered alternatives including exempting small live poultry dealers from this section of the interim rule, we rejected those options because we believe the benefits to small poultry growers justify the cost of compliance with the rule on small live poultry dealers.

Based on the regulatory impact analysis presented earlier and the discussion of comments, we expect this interim rule to have an economic impact on a substantial number of small businesses. Within this interim rule, we provide a succinct statement of the need for the rule; a summary of significant issues raised by commenters and an assessment of those

comments; changes made as a result of such comments, including changes to minimize significant, negative economic impacts; and estimates of the number of small businesses. We have, therefore, complied with the Regulatory Flexibility Act.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. Section 414 of the P&S Act (7 U.S.C. 228c) addresses the issue of preemption.¹⁵ There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this interim rule. Nothing in this interim rule is intended to interfere with a person's right to enforce liability against any person subject to the P&S Act under authority granted in section 308 of the P&S Act.

Executive Order 13175

This interim rule has been reviewed with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. GIPSA offered opportunities to meet with representatives from Tribal Governments during the comment period for the proposed rule, June 22 – November 22, 2010 with specific opportunities in Rapid City, SD on October 28th, 2010 and Oklahoma City, OK on November 3rd, 2010. All tribal headquarters were invited to participate in these venues however, no tribe participated in the venues for consultation.

GIPSA has received no specific indication that the rule will have a direct or substantial effect on

¹⁵**Section 414. Federal preemption of State and local requirements.** No requirement of any State or territory of the United States, or any subdivision thereof, or the District of Columbia, with respect to bonding of packers or prompt payment by packers for livestock purchases may be enforced upon any packer operating in compliance with the bonding provisions under the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), and prompt payment provisions of section 409 of this Act, respectively; Provided, That this section shall not preclude a State from enforcing a requirement, with respect to payment for livestock purchased by a packer at a stockyard subject to this Act, which is not in conflict with the Act or regulations thereunder: Provided further, That this section shall not preclude a State from enforcing State law or regulations with respect to any packer not subject to this Act or the Act of July 12, 1943.

tribes and has received no other requests for consultation as of the date of this publication.

Should GIPSA receive any future requests for consultation, such requests will be addressed as they arise.

Paperwork Reduction Act

This interim rule is being issued in accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Upon OMB approval this package will be merged with 0580-0015. The costs detailed below were reflected in the regulatory impact analysis' total costs for the interim rule and were derived from both that analysis and the comments received on the proposed rule. Specifically, the proposed rule discussed the paperwork burden on section-by-section basis. Only the burden associated with the section being finalized by this action were included in the analysis below. Further, the information in the proposed rule was amended as result of comments received in response to the proposed rule.

The hours involved in conducting tasks associated with the interim rule were estimated using GIPSA expertise in administering the P&S Act to develop the time required to maintain records, complete forms, submit required information, for management review, and a legal review for possible changes in contracts or business practices. Estimates are based on GIPSA's experience reviewing business records in the normal course of enforcing the P&S Act, and its work with data that is of similar in type and complexity to that to be reported. General cost and time parameters used across more than one rule provision are detailed in the table below.

Table 1. General Parameters Used for Estimates

Parameter	Value
Admin. assistant salary (\$/yr)	55,000
Manager salary (\$/yr)	75,000
Legal salary (\$/yr)	80,000
Wage full cost, admin. asst. (\$/hr)	34
Wage full cost, manager (\$/hour)	46
Wage full cost, legal (\$/hour)	49
Live poultry dealer firms (#)	199
Poultry producer & hatchery agreements (#)	22,200

The administrative assistant annual salary is from information obtained on average hourly earnings from the U.S. Bureau of Labor Statistics, Table B-4 (release date 8-7-09), under the other services line with added expenses outside of salary. Management salary calculations are based on a \$75,000 annual salary. Legal salary calculations are based on an average corporate attorney with an \$80,000 annual salary. All salaries are adjusted by a factor of 1.27 to account for benefits and placed on an hourly basis as $\$/hour = (salary/year \times 1.27 \text{ for benefits}) / (40 \text{ hours/week} \times 52 \text{ weeks/year})$. Specific administrative costs by provision were calculated as described below.

The compliance cost of structuring settlement groupings is based on an estimated 22,200 grower contracts held by 199 live poultry dealers and is divided into three representative average firm level costs. An estimated contract review cost of \$739 per representative average firm from an administrative assistant/ personnel wage \$34/hour cost times 1 hour multiplied by 22 contracts considered per year per firm. An estimated cost of \$4,030 per representative average firm for management planning and review = (management wage \$46/hour x 4 hours x 22 contracts per year). A legal review cost of \$1,612 per representative average firm = (legal wage

\$49/hour x 2 hours x 22 contracts per year)). These three cost areas yield a total annual industry cost of \$1,269,725.

E-Government Act Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

5 U.S.C. 553

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting the rule into effect. The action is authorized under the Packers and Stockyards Act, 1921, as amended and supplemented. After issuance of the proposed rule, the Department has decided to provide further opportunity to comment due to comments received.

List of Subjects in 9 CFR Part 201

Poultry

For the reasons set forth in the preamble, we amend 9 CFR part 201 to read as follows:

PART 201 – Regulations Under the Packers and Stockyards Act

1. Amend § 201.2 to add new paragraph (l) to read as follows:

§ 201.2 Terms defined.

* * * * *

(l) *Tournament System* means any method used by a live poultry dealer to calculate some portion of the payment made to poultry growers based on a comparison of one poultry grower's performance with that of one or more other poultry grower's performance.

* * * * *

2. New §§ 201.214 is added to read as follows:

§ 201.214 Tournament systems and compensation.

(a) Live poultry dealers who pay poultry growers on a tournament system must rank growers in settlement groups with other growers who raise and care for the same type and kind of poultry, and other growers with like house types based upon comparable production technology utilized. Poultry will be considered to be of the same type and kind if it is of the same breed and shares the same target weight range.

J. Dudley Butler

Administrator, Grain Inspection, Packers and Stockyards Administration