DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Part 201

[Doc. No. AMS–FTPP–21–0044]

RIN 0581–AE03

Transparency in Poultry Grower Contracting and Tournaments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service is soliciting comments on proposed revisions to the regulations under the Packers and Stockyards Act, 1921. The proposal would revise the list of disclosures and information live poultry dealers must furnish to poultry growers and sellers with whom dealers make poultry growing arrangements. The proposal would establish additional disclosure requirements in connection with the use of poultry grower ranking systems by live poultry dealers to determine settlement payments for poultry growers. The proposals are intended to promote transparency in poultry production contracting and to give poultry growers and prospective poultry growers relevant information with which to make business decisions.

DATES: Comments must be received by August 8, 2022. Comments on the information collection aspects of this proposed rule must be received by August 8, 2022.

ADDRESSES: Comments must be submitted through the Federal e-rulemaking portal at *https://www.regulations.gov* and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Chief Legal Officer/Policy Advisor, Packers and Stockyards Division, USDA AMS Fair Trade Practices Program, 1400 Independence Ave. SW, Washington, DC 20250; Phone: (202) 690–4355; or email: *s.brett.offutt@usda.gov.*

SUPPLEMENTARY INFORMATION: At the beginning of the 20th century, a small number of meat packing companies dominated the industry and engaged in practices that were deemed anticompetitive and harmful to producers. In response, Congress enacted the Packers and Stockyards Act, 1921 (Act), 7 U.S.C. 181 *et seq.,* which seeks to promote fairness, reasonableness, and transparency in the marketplace by prohibiting practices that are contrary to these goals. In the 100 years since the Act went into effect, business practices changed significantly, particularly in the poultry industry, for which provisions were added to the law in 1935.

Within the last 40 years, the poultry industry has become increasingly concentrated, both horizontally and vertically, with the use of the poultry grower ranking or ''tournament'' pay system increasingly predominant throughout. With vertical integration, live poultry dealers frequently own or control all segments of the production process except growout, where poultry growers raise young poultry to harvest size under poultry growing arrangements (contracts). Under this system, poultry grower investment is substantial and growing, yet they may face a market dominated by only one or two live poultry dealers for which they can grow.

We will explain in this document how poultry growers and prospective poultry growers may find themselves unable to negotiate for (1) access to critical information needed to properly assess farm revenue streams, and (2) information related to the distribution of inputs affecting performance among tournament participants. The inability to secure this information may expose growers to various risks of deception that could be reduced or eliminated with the provision of the information. Additionally, we will establish that live poultry dealers possess this information and are able to provide it to growers.

Most chicken growers and some turkey growers raise poultry under a growing arrangement commonly known as a tournament system. Under this system, live poultry dealers use a relative performance or grower ranking system for settlement purposes, *i.e.,* to determine grower payment among a group of competing growers. We will explain in this document how poultry growers in tournament systems may find themselves competing for payment without access to information that would allow them to optimize poultry production and payment or manage the risks related thereto.

Over the past several years, the Department of Agriculture (USDA) has received numerous complaints from poultry growers about poultry growing contracting in general and tournament systems particularly. While the complaints cover a range of concerns, a central concern is the gap between expected earnings and the ability to actually achieve those outcomes through reasonable efforts by the grower. Accordingly, AMS is proposing rules that would increase transparency in all poultry growing contracting, including tournament systems, targeted at key inflection points for growers—at the time of contracting and housing upgrades, and at the provision of inputs during tournaments. In this rulemaking, we are seeking to utilize transparency to secure a more level playing field for growers and enable a marketplace with fairer contracts and the fairer operation of those contracts under the contract production model.

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I. Background

Among other things, sec. 202(a) of the Act (7 U.S.C. 192) prohibits live poultry dealers, with respect to live poultry, from engaging in or using deceptive practices or devices. Further, sec. 410(a) of the Act (7 U.S.C. 228b–1) requires live poultry dealers obtaining live poultry under a poultry growing arrangement to make full payment for such poultry to the poultry grower from whom the dealer obtains the poultry on a timely basis. Sec. 407(a) of the Act authorizes the Secretary of Agriculture (Secretary) to make rules and regulations as necessary to carry out the provisions of the Act. Such regulations are found, in part, in the Code of Federal Regulations (CFR) at 9 CFR part 201.

This proposed rule builds on existing disclosure concepts under the Packers and Stockyards Act in 7 U.S.C 197(a) through (c) and 9 CFR 201.100. The current disclosure framework has improved transparency in poultry contracting. However, the modern poultry industry now requires larger, and growing, capital investments, and growers need additional information with which to make business decisions. Growers have consistently expressed concerns about the inadequacy of some production contract terms and the discretionary functions exercised by live poultry dealers under those contracts, which they assert have exposed them to deception and other abuses. AMS agrees many production contracts do not provide enough information for growers to assess their expected value, and important information relating to live poultry dealer obligations and practices should be better illuminated. The purpose of this proposed rule is to provide growers with this type of relevant information. This proposal reflects AMS's desire to build on existing Packers and Stockyard Act disclosure concepts to ensure poultry growers have the tools and information they need to be successful in their pursuits.

Disclosure has been a staple [1] of the Act's regulatory scheme and is required under the regulations. Moreover, disclosure for the primary purpose of providing adequate information necessary for parties in asymmetrical business relationships to make informed business decisions and risk assessments has long been the subject of Federal Trade Commission (FTC) regulation under section 5 of the FTC Act, which, like section 202(a) of the Packers and Stockyards Act, addresses deception. For example, the Federal Trade Commission's Franchise Rule requires the franchising industry to provide prospective purchasers of franchises information necessary to weigh the risks and benefits of an investment by providing required disclosures in a uniform format.[2] This proposed rule is designed to similarly provide current and prospective poultry growers with sufficient information prior to entering into an agreement.

This proposed rule would revise § 201.100 of the regulations by adding certain items to the list of required disclosures a live poultry dealer must make to poultry growers and prospective poultry growers in connection with poultry growing arrangements. The proposal would further require live poultry dealers to specify additional terms in poultry growing contracts. AMS intends these proposed revisions to improve transparency and forestall deception in the use of poultry growing arrangements.

This proposed rule would also add a new § 201.214 to the regulations that would require live poultry dealers to provide certain information to poultry growers in tournament pay systems about integrator-controlled inputs related to the poultry flocks growers receive for growout. The proposed provisions also would add a new level of transparency to grower ranking sheets, ensuring that poultry growers can evaluate the distribution of inputs among all tournament participants and better assess the effect on grower payment. AMS intends the proposed requirements to provide greater transparency and forestall deception in the use of poultry grower ranking systems.

Finally, this proposed rule would make conforming changes to the regulations by adding to the list of definitions in § 201.2 to define terms used in revised § 201.100 and new § 201.214. Specifics of each of these proposals are provided later in this document.

A. Previous Rulemaking

USDA has made previous attempts to address grower concerns arising from the use of poultry growing arrangements and poultry grower ranking systems. Two such attempts were made by USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA), which previously administered the provisions of the Act. GIPSA issued a proposed rule in 2010 (75 FR 35338; June 22, 2010) that would have, among other things, identified as unfair, unjustly discriminatory, and deceptive specific practices related to poultry contracting. The 2010 proposed rule would have required live poultry dealers—when paying growers under poultry grower ranking systems—to pay growers the same base pay for growing the same type and kind of poultry. The 2010 proposed rule further would have required that tournament system growers be settled in groups with other growers with similar house types. After considering comments on the 2010 proposal, GIPSA elected not to finalize certain provisions related to poultry contracting, so it modified the original proposal and published a second proposed rule in 2016 (81 FR 92723; December 20, 2016). The 2016 proposed rule would have identified criteria that the Secretary could consider when determining whether a live poultry dealer's use of a system for ranking poultry growers for settlement purposes is unfair, unjustly discriminatory, or deceptive or gives an undue or unreasonable preference, advantage, prejudice, or disadvantage. The proposed amendments would also have clarified that, absent demonstration of a legitimate business justification, failing to use a poultry grower ranking system in a fair manner after applying the identified criteria is unfair, unjustly discriminatory, or deceptive and a violation of the Packers and Stockyards Act, regardless of whether it harms or is likely to harm competition. The original 60-day public comment period for the 2016 proposed rule was extended an additional 30 days, consistent with the memorandum of January 20, 2017, to the heads of executive departments and agencies from the Assistant to the President and Chief of Staff entitled ''Regulatory Freeze Pending Review.''

In November 2017, responsibility for GIPSA activities was transferred to AMS, which now administers the Act and regulations, and which has assumed responsibility for this rulemaking. In its review of public comments on the 2016 proposed rule, AMS found that many of

[1] For example, see current 9 CFR 201.100(a)—Poultry growing arrangement, timing of disclosure.

[2] 16 CFR part 436; 84 FR 9051 (May 2019).

the comments—both supportive and opposed—identified reasonable concerns regarding the proposed regulation's structure and language. AMS recognized further that the proposed rule may not have adequately addressed information imbalances between contracting parties. AMS determined that the 2016 proposed rule was unable to address many of the commenters' concerns without material changes and elected to withdraw the 2016 proposed rule and develop a new regulatory proposal pertaining to information imbalances in poultry grower contracting and grower ranking systems. The 2016 proposed rule was withdrawn on November 4, 2021 (86 FR 60779).

Executive Order 14036—Promoting Competition in the American Economy (86 FR 36987; July 9, 2021) directs the Secretary of Agriculture to address unfair treatment of farmers and improve conditions of competition in their markets by considering rulemaking to address, among other things, certain practices related to poultry grower ranking systems. AMS has considered that direction in undertaking this rulemaking. While the discussions in this rule focus largely on broiler (chicken) production, the industry concepts presented—and the proposed regulations—are intended to apply to the commercial production of all poultry species where the proposed regulatory requirements are relevant. The bulk of available research and information currently available to AMS specifically addresses broiler production. Nevertheless, AMS believes that body of research and information is relevant to other poultry species, given the absence of material differences in their commercial production.

B. Relevant Terms and Definitions

For this preamble, section 2(a) of the Act (7 U.S.C. 182) provides various useful definitions: A *live poultry dealer* is any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another. A *poultry grower* is any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such a person or by another, but not an employee of the owner of such poultry. A *poultry growing arrangement* is any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another's instructions, for slaughter.

C. Industry Background

In this section, we explain how high levels of vertical integration in U.S. commercial poultry production have influenced the poultry production contracting process and the production contracts themselves. We also illustrate how the effects of market concentration limit poultry growers' options in relation to dealers with whom they can contract to produce poultry. When they have few or no alternative options, growers lack the bargaining power to negotiate for, among other things, better information symmetry, which gives rise to the risk of deception at a series of points in the relationship. We also describe some of the factors that affect grower payments as they relate to the information imbalances we are proposing to remedy.

1. Market Structure

Some live poultry dealer firms own and manage local ''complexes'' of integrated operations that include hatcheries, feed mills, transportation systems, and processing facilities, and they contract with individual growers within a local region to raise birds for meat and hatchery eggs.[3] These live poultry dealers that own and manage vertically integrated operations are referred to in the industry as ''integrators.'' Other industries may follow this model to some extent (for example, some firms manage multiple aspects of hog production), but it is used in almost all broiler chicken production[4] and is fairly common in turkey production.

Through vertical integration, integrators control the complete supply chain from poultry genetics to slaughter. Integrators also own most of the inputs and manage the operation of the supply chain. However, integrators outsource the function and major costs of raising the poultry to broiler growers, while controlling much of that process through their production contracts. Through the poultry growing arrangement, broiler growers provide the growout facilities and the equipment, labor, and management associated with those facilities. Broiler growers are responsible for utilities, fuel, maintenance, and repair. The growers' tasks include ensuring the equipment functions properly and the environment inside the house is satisfactory at all times. The grower is responsible for waste removal and disposal of dead birds. These activities are subject to significant direction and control by the integrator or integratory subsidiary. Integrators exert significant power over contract poultry grower operations through individual production contracts, payment systems, and control of certain production variables, such as poultry breeds, breeder stock age, frequency of flock placements, stocking density, length of the growout periods (the number of days birds are housed on the grower's farm), feed quality and delivery, and the type and administration of veterinary medicines.

Market consolidation combined with certain natural factors (such as the fragility of birds limiting their transport), many integrators operate as monopsonists[5] or oligopsonists[6] in their relevant regional market. Some research[7] shows a correlation in local markets between the number of available integrators and grower payments, with payments shrinking as the number of integrators decreases. In local markets, the lack of alternative integrators coupled with integrator control and discretion over production contracts leaves growers with little market power to demand reasonable contract transparency. As discussed in the following section, growers' plights are aggravated further by the substantial investment required to enter the poultry business.

2. Poultry Housing Construction and Grower Debt

Poultry growout operations require significant financial investments on the part of poultry growers, who typically provide the facilities (poultry housing and necessary equipment), utilities (electricity, gas, and water), manure management, compliance with environmental regulations, labor, and day-to-day management of the growing poultry. One of the costliest investments

[3] MacDonald, James M. *Technology, Organization, and Financial Performance in U.S. Broiler Production, EIB–126,* U.S. Department of Agriculture, Economic Research Service, June 2014.

[4] In a 2011 survey of 17 sample states, 97% of broiler production was done by contract growers. MacDonald (June 2014) Op. Cit.

[5] Merriam-Webster online dictionary: A monopsonist is one who is a single buyer for a product or service of many sellers. *https://www.merriam-webster.com/dictionary/monopsonist*; accessed 3/8/2022.

[6] Merriam-Webster online dictionary: Oligopsony is a market situation in which each of a few buyers exerts a disproportionate influence on the market. An oligopsonist is a member of an oligopsonistic industry or market. *https://www.merriam-webster.com/dictionary/oligopsonist*; accessed 3/8/2022.

[7] MacDonald, James M., and Nigel Key. ''Market Power in Poultry Production Contracting? Evidence from a Farm Survey''. *Journal of Agricultural and Applied Economics* 44 (November 2012): 477–490. See also, MacDonald, James M. *Technology, Organization, and Financial Performance in U.S. Broiler Production, EIB–126,* U.S. Department of Agriculture, Economic Research Service, (June 2014): 29–30.

is in poultry housing and equipment. A poultry growing contract includes the live poultry dealer's specifications for the poultry housing and equipment the growers are required to supply under the contract. At times, the live poultry dealer may encourage, incentivize, or even require a poultry grower to upgrade existing housing or equipment in order to renew or revise an existing contract.

A 2011 study estimated a cost of $924,000 for site preparation, construction, and necessary equipment for four 25,000-square-foot poultry houses (or $231,000 per house) in rural Georgia at that time, independent of the cost for the land.[8] Costs for establishing poultry houses have increased substantially since 2011, due to the advancement of new technologies in poultry housing and the increased cost of materials. AMS estimates current construction costs at $350,000 to $400,000 per poultry house.[9]

Poultry growers can incur considerable debt to make the investments necessary for poultry production. Most new broiler housing is debt-financed. According to MacDonald, U.S. contract poultry growers' total debt amounted to $5.2 billion, or 22 percent of the total value of their assets, in 2011.[10] The research cited here found that debt loads—and exposure to liquidity risks, should flock placements and revenues fall—are closely related to the age of the operation, with newer farmers carrying greater debt relative to the value of farm assets. Farmers with fewer than six years of experience in broiler production carried debt equal to 51 percent of assets, on average, and one quarter of those farmers carried debt equal to at least 77 percent of assets.

The weight of poultry grower debt load can be exacerbated by three additional factors: (1) The length, in terms of time, of a poultry growing arrangement is rarely long enough to cover the grower's debt repayment period, and can be as short as one flock; (2) growers may be encouraged or required by live poultry dealers to invest in facility upgrades, which may lead to additional debt; and (3) poultry housing is a specific-use asset with little salvage or repurpose value.[11] In other words, the grower is unlikely to be able to use or sell the facilities for a different purpose should the poultry growing contract be terminated.

Grower debt problems are exacerbated by the limited number of live poultry dealers in most localities and by dealer-specific requirements that inhibit grower movement between dealers. For example, a grower who currently produces smaller birds for one live poultry dealer may desire to move to a different dealer that wants larger birds. The grower could be required to upgrade their poultry growing facility to include more cooling capacity in order to accommodate larger birds. However, such upgrades may not be economically feasible for the grower, so the grower stays with the current live poultry dealer.

3. Poultry Grower Compensation

Poultry growers are compensated on the growout of individual flocks. Most growers are paid on the basis of the weight of the finished poultry, adjusted by a feed conversion factor. Live poultry dealers calculate feed conversion by dividing the total pounds of poultry feed used during growout by the total pounds of finished poultry at the end of growout. The feed conversion factor is expressed as a ratio of pounds of feed to pounds of finished poultry. For example, a feed conversion ratio of 1.93 means an average of 1.93 pounds of poultry feed were needed to produce each pound of finished poultry. The live poultry dealer uses the feed conversion factor to measure poultry grower efficiency. Specific poultry growing arrangements may provide for a variety of nuanced cost and payment formulas, and may include supplemental fuel and square footage bonus payments. However, the greatest portion of grower compensation is determined according to the following simplified equation:

Farm Weight (in pounds) × Feed Conversion (in dollars) = Grower Pay

Under a typical scenario, birds are caught at the end of the growout period, loaded onto trucks, and delivered to the processing facility, where they are weighed. The sum of all weights of all loads originating from a grower's farm is the ''farm weight.'' ''Feed conversion,'' as described above, is determined by formula and converted to a monetary value.

Alternatively, growers may receive partial or full compensation based on their growing facility square footage. For instance, some growers may receive square footage supplements as incentives to offset new costs for housing. Or in rare cases, compensation is based strictly on facility square footage. In either of these situations, square footage compensation is based on the size of the poultry growing facility, regardless of the number or weight of birds produced.

Growers seeking to maximize farm returns would naturally prefer to keep their facilities in a near-constant state of production, receiving as many individual flock placements as possible over a relevant time period, with minimal idle or lay-out time between flocks.[12] If they are paid on a farm-weight basis, growers seeking to maximize individual flock returns will naturally strive to maximize farm weight.

4. Integrator Inputs

Two important factors affecting poultry grower compensation are the timing and quality of certain inputs controlled by the live poultry dealer. In this section we describe those inputs and explain how their timing and variation can impact farm weight and feed conversion, and thus grower payments.

a. Stocking Density and Flock Placement Frequency

Often expressed as a ratio of birds per square foot, or pounds (target weight of poultry at harvest) per square foot, stocking density reflects the number of birds placed on a farm. The target weight informs a range of stocking densities that may result in optimal bird performance. Integrators set both stocking density and target weight.

For example, one approach[13] recommends the following range of stocking densities:

[8] Cunningham, Dan L., and Brian D. Fairchild. ''Broiler Production Systems in Georgia Costs and Returns Analysis 2011–2012.'' *UGA Cooperative Extension Bulletin* 1240 (November 2011), University of Georgia Cooperative Extension.

[9] See, for example, Cunningham and Fairchild (November 2011) Op. Cit.; Simpson, Eugene, Joseph Hess and Paul Brown, *Economic Impact of a New Broiler House in Alabama,* Alabama A&M & Auburn Universities Extension, March 1, 2019 (estimating a $479,160 construction cost for a 39,600 square foot broiler house).

[10] MacDonald (June 2014) Op. Cit.

[11] Poultry growing facilities are often characterized by certain expensive attributes, such as temperature and other habitat control systems. A fully equipped poultry growing facility repurposed, for example, as a hay barn or other storage is unlikely to generate the revenue necessary to meet a grower's $400,000 mortgage obligation. Nor is repurposing it for an alternative livestock usage, such as hogs or dairy cows, possible, at least without retrofitting that would essentially demolish the growout facility. The grower's return on investment is tied to using the facility as intended.

[12] Growers views and practices may vary with respect to their preferred times between flocks for the purposes of appropriate maintenance and sanitation activities.

[13] National Chicken Council. *National Chicken Council Animal Welfare Guidelines and Audit Checklist For Broilers,* pp. 11–12, (September 2020). *https://www.nationalchickencouncil.org/wp-content/uploads/2021/02/NCC-Animal-Welfare-Guidelines_Broilers_Sept2020.pdf*; accessed 1/3/2022.

Other approaches include those set forth by the Better Chicken Commitment, which will set a

Continued

Maximum bird weight range	Maximum stocking density
Below 4.5 lbs. liveweight.	6.5 pounds per sq. ft
4.5 to 5.5 lbs. liveweight.	7.5 pounds per sq. ft.
5.6 to 7.5 lbs. liveweight.	8.5 pounds per sq. ft.
More than 7.5 lbs. liveweight.	9.0 pounds per sq. ft.

Stocking density has critical implications for poultry growers because—up to a certain point—farm weight can increase as the number of birds per facility square foot increases. Because stocking densities can impact payments based on farm weights, growers desire the maximum stocking density that does not result in performance impairments.[14] Integrators dictate the stocking density of each placement, and generally prefer maximum stocking densities to maximize production volume. Of course, complex-level supply factors may affect integrator decision making, and integrators may not place as many birds with growers as growers could accommodate and would like for maximum growout efficiency. Consumer, environmental, and animal welfare factors may also affect stocking density decisions by integrators. However, being able to anticipate the minimum size of flocks that will be placed for growout on their farms each year allows growers to make appropriate farm management and financial decisions. This is challenging because many poultry growing arrangements do not specify the minimum stocking density of flocks that will be placed with the grower.

Obviously, maximum efficiency is also achieved when a grower's facility is in production for as many days as possible during the year. Depending on the term of the poultry growing arrangement between the live poultry dealer and the poultry grower, the dealer may schedule the placement of one or more flocks at the grower's facility over the course of a year, with gaps (lay-out or idle time) for necessary cleanup and maintenance between placements. Being able to anticipate the number of flocks that will be placed for growout on their farms each year allows growers to make appropriate farm management and financial decisions. However, many poultry growing arrangements do not specify the number of flocks per year that will be placed with the grower.

b. Breed

Modern chicken breeds are the result years of evolution by means of natural selection, to which artificial selection for commercial objectives has been applied. At the highest level, the pure-breeding lines are owned and controlled by the breeding companies. These lines are subjected to full scale selection programs; it is from these lines that all of a company's broiler products have descended.[15] The great-grandparent stocks, which are produced from the pure-bred lines, are subjected to mass selection for selected traits. Specific grandparent lines are cross bred to produce the parent stock, which are then distributed to breeder growers. The final step of the intensive artificial selection is the crossbreeding of these hybrids (parent stock) to give rise to the production broilers, which are raised for slaughter by contract growers.

Growth rate has consistently been the prime selection trait since the 1950s, with more recent emphasis placed on the yield and other attributes of breast meat, limiting mortality, and feed use efficiency.[16] [17] Much progress has been made in artificial selection technologies in order to increase growth rate and feed use efficiency. In the production of broilers, different breeds may be used within each target weight category. Breeds with higher and faster growth rates may result in heavier farm weights, with the inverse also being true.

To illustrate, the following comparison uses information from the breed performance and nutrition guides published by the companies themselves.[18]

	Breed		
	Cobb 500	Cobb 700	Ross 308/ 308FF
42nd Day:			
Weight:	7.23	6.28	6.914
Cumulative Feed Conversion Rate:	1.555	1.597	1.596
56th Day:			
Weight:	10.23	9.07	10.115
Cumulative Feed Conversion Rate:	1.842	1.849	1.914

c. Gender

The gender of poultry placed on a grower's farm facility may impact the flock's growth rate and final farm weight, and thus grower payment. Differences between the growth rates of male and female broilers have been reported by many researchers. Under similar management conditions, males grow faster and achieve marketable weight earlier than females. According to Burke and Sharp,[19] the mean body weight of a male embryo was significantly greater than that of a female at 11, 13, and 18 days of incubation. Male broilers have been reported to grow faster and heavier than females under various rearing conditions. Growth rate reflects metabolic activity, which is strongly influenced by sex, age, nutritional status, and homogeneity. It also has been reported that male chickens showed better performance than females in terms of more weight gain.[20] The majority of integrators use ''straight-run'' birds to supply farms. Straight-run

maximum stocking density of 6.0 lbs./sq. foot starting in 2024, available at *https://betterchickencommitment.com/policy/* (last accessed March 2022).

[14] Dozier III, W.A., et al. ''Stocking Density Effects on Growth Performance and Processing Yields of Heavy Broilers,'' *Poultry Science* 84 (2005): 1332–1338; Puron, Diego et al. ''Broiler performance at different stocking densities.'' *Journal of Applied Poultry Research* 4.1:55–60 (1995).

[15] Muir, W.M. and SE Aggrey. *Poultry Genetics, Breeding, and BioTechnology* (2003).

[16] Muir and Aggrey (2003) Op. Cit.

[17] Laughlin, Ken, ''The Evolution of Genetics, Breeding, and Production. *Temperton Fellowship Report* 15 (2007).

[18] See: Cobb500™ Broiler Performance & Nutrition Supplement (2022), Cobb-Vantress; Cobb700™ Broiler Supplement, Cobb-Vantress, 2022; Ross 308/Ross 308FF Broiler Performance Objectives 2019, Aviagen Ross, *http://eu.aviagen.com/tech-center/download/1339/Ross308-308FF-BroilerPO2019-EN.pdf,* accessed March 25, 2022.

[19] Burke, William and Peter J. Sharp. ''Sex Differences in Body Weight of Chicken Embryos.'' *Poultry Science* 68.6 (1989): 805–810.

[20] Beg, Mah, et al. *Effects of Separate Sex Growing on Performance and Metabolic Disorders of Broilers.* Diss. Faculty of Animal Science and Veterinary Medicine, Sher-e-Bangla Agricultural University, Dhaka, Bangladesh, 2016.

birds are not sexed and are randomly grouped for growout.

d. Breeder Flock Age

Breeder facilities are populated with select poultry breeds whose purpose is to produce eggs and ultimately chicks that will go into broiler production. The age of breeder flocks may also influence the size and quality of eggs and chicks, bird mortality, and feed conversion, and ultimately the weight of poultry at harvest and thus grower payments. Older hens lay larger eggs that hatch into larger chicks,[21 22 23] and egg weight and hatching weight of chicks are correlated with market age weight.[24 25] Small chicks from young hens have higher mortality after placement and reach market weight at a later age, thus theoretically requiring more time in growout and more feed to achieve market weight.

USDA research [26] indicates breeder facility flocks are typically populated and depopulated on an all-in and all-out basis. That is, the majority of birds in each breeder flock are all the same age. Each breeder flock is entirely depopulated (slaughtered) when it reaches a certain age where egg and progeny quality diminish.

Composed of a high female-to-male ratio, a typical broiler breeder flock's productive life cycle ranges from 21 weeks to 65 weeks. Studies suggest that broiler offspring from hens between 35 and 51 weeks of age perform best at different periods during growout.[27] However, research results concerning feed efficiency and weights of broilers at market age have been mixed. Feed efficiency has been shown to be positively,[28] negatively,[29] or not [30] correlated to weight of broilers at market age. Even with the benefit of static growth rates, poultry grown from smaller chicks are unlikely to match the weight of poultry grown from chicks of more mature breeder flocks in identical time frames.

e. Breeder Flock Health

Various diseases [31] and conditions can adversely affect egg production and quality either directly, by affecting the reproductive system, or indirectly, by affecting the overall health of the bird. According to Spackman,[32] many of the diseases originating in breeder flocks can result in suboptimal offspring performance.

The progeny flocks from impaired breeder flocks may be associated with higher mortality, higher morbidity, and decreased growth rates, resulting in decreased farm weight or lower feed conversion, which impact grower payment. Disease outbreaks can generally be traced to an individual breeder farm, but growers have no control or knowledge regarding the source of young poultry placed at their facilities for growout.

f. Feed Disruptions

Poultry diets are formulated by integrators to optimize bird weight. Integrators are responsible for ensuring feed is consistently delivered to growout facilities. However, feed disruptions—where poultry go without feed for a certain length of time—may occur for any number of reasons, such as feed mill power outages, ingredient supply shortages, or transportation problems, and they may result in suboptimal poultry weight gain. A study by Dozier and others [33] indicated that broiler body weights decreased when feed was removed. Depending upon the timing and duration of a feed outage, a broiler may be able to recoup any weight loss. Regardless of their cause, feed disruptions have the potential to affect bird weights, result in less farm weight, and affect grower payments.

g. Medications

A live poultry dealer may find it necessary to supply one or more flocks with veterinary medicines or supplements during flock growout. Such treatments may be necessary to mitigate disease within a single poultry house or an entire flock, or to boost the performance of suboptimal progeny from impaired breeder flocks, as described above. These treatments may affect the flock's growth rate or mortality and, therefore, grower payments.

II. Poultry Growing Arrangements

In this section, we explain the operation of poultry growing arrangements in general, as well as some of the risks growers face in connection with those arrangements. We also summarize comments we've received from growers expressing their concerns about contracting with live poultry dealers to produce poultry.

A. Incomplete Contracts

As explained earlier in this document, a poultry growing arrangement or production contract reflects the arrangement between a live poultry dealer and a poultry grower, under which the grower is compensated for raising live poultry for delivery to the dealer for slaughter. Such a contract may be viewed as complete if the terms include the substantive legal, practical, and economic promises, obligations, and contingencies needed to operate in a poultry growing arrangement. Additionally, those terms should be verifiable by a third-party and legally enforceable. Incomplete contracts may arise when practically important terms do not meet those conditions. Incomplete contracts may magnify risks with respect to the performance of the contractual counterparty and lead to other potential inefficiencies.[34] In particular, at least one party may have

[21] Washburn, K.W., and R.A. Guill. ''Relationship of Embryo Weight as a Percent of Egg Weight to Efficiency of Feed Utilization in the Hatched Chick.'' *Poultry Science* 53.2 (1974): 766–769.

[22] Weatherup, S.T.C., and W.H. Foster. ''A Description of the Curve Relating Egg Weight and Age of Hen.'' *British Poultry Science* 21.6 (1980): 511–519.

[23] Wilson, H.R. ''Interrelationships of Egg Size, Chick Size, Posthatching Growth and Hatchability.'' *World's Poultry Science Journal* 47.1 (1991): 5–20.

[24] Goodwin, K. ''Effect of Hatching Egg Size and Chick Size Upon Subsequent Growth Rate in Chickens.'' *Poultry Science* 40 (1961): 1408–1409.

[25] Morris, R.H., D.F. Hessels, and R.J. Bishop. ''The Relationship Between Hatching Egg Weight and Subsequent Performance of Broiler Chickens.'' *British Poultry Science* 9.4 (1968): 305–315.

[26] Video-conference interview with Joseph L. Purswell, Ph.D., PE, Agricultural Engineer, Dr. Katie Elliot, Hatchery Research Scientist, Dr. Klint McCafferty, Nutrition Research Scientist, Agricultural Research Service, U.S. Department of Agriculture (Sept. 2, 2021).

[27] Peebles, E. David, et al. ''Effects of Breeder Age and Dietary Fat on Subsequent Broiler Performance. 1. Growth, Mortality, and Feed Conversion.'' *Poultry Science* 78.4 (1999): 505–511.

AMS notes additionally that research in this and related areas has limitations. It is older and results are mixed. AMS is concerned that publically available research has stagnated, despite the introduction of new breed strains in the intervening years. Because integrators now own the genetics companies, AMS has additional concerns that research has, in effect, been privatized, creating informational asymmeteries. Based on regulatory experience and on public comments, growers believe these factors affect performance, highlight its value to growers from disclosure.

[28] O'Neill, J.B. ''Relationship of Chick Size to Egg Size and its Effect Upon Growth and Mortality.'' *Poultry Science* 29 (1950): 774.

[29] Wyatt, C.L., W.D. Weaver Jr, and W.L. Beane. ''Influence of Egg Size, Eggshell Quality, and Posthatch Holding Time on Broiler Performance.'' *Poultry Science* 64.11 (1985): 2049–2055.

[30] Guill, R.A., and K.W. Washburn. ''Genetic Changes in Efficiency of Feed Utilization of Chicks Maintaining Body Weight Constant.'' *Poultry Science* 53.3 (1974): 1146–1154.

[31] Examples include: Bacterial (pullorum and gallinarum), Mycoplasma, and Avian encephalomyelitis (AE).

[32] Wells, R.G., and C.G. Belyawin. ''Egg quality-current problems and recent advances.'' *Poultry science symposium series.* No. 636.513 W4. 1987. (citing Spackman, D. ''The Effects of Disease on Egg Quality.''

[33] Dozier III, W.A., et al. ''Effects of Early Skip-A-Day Feed Removal on Broiler Live Performance and Carcass Yield.'' *Journal of Applied Poultry Research* 11.3 (2002): 297–303.

[34] Wu, S. 2014. ''Adapting Contract Theory to Fit Contract Farming''. *American Journal of Agricultural Economics,* Volume 96, Issue 5 (October 2014): 1241–1256.

discretionary latitude to deviate from expectations.[35] For example, poultry production contracts often do not guarantee the number of flocks a grower will receive, even under long-term contracts, although this is a critical datapoint for understanding the value of the contract to the grower.[36] The following sections will highlight areas and terms where AMS believes typical poultry growing arrangements are deficient or incomplete from an economic or operational standpoint, inhibiting growers' ability to properly assess the expected value of the contract.

B. Market Power and Risks to Growers

Live poultry dealers often operate as monopsonists [37] or oligopsonists [38] in a local market. According to MacDonald and Key,[39] about one quarter of contract growers reported that there was just one live poultry dealer in their area; another quarter reported two; another quarter reported three; and the rest reported four or more. Owing to their greater negotiating power than that of the poultry growers with whom they contract, live poultry dealers set the terms of the contracts. Consequently, most poultry growers have little or no influence over the frequency of individual flock placements they receive over any particular time period. A growout period is based on the target weight of finished poultry, as determined by the live poultry dealer. The amount of time between flocks is also decided by the dealer.

Grower payments are also influenced by live poultry dealer market power. In the study cited above, grower payments (per pound, controlling for bird size) were lower in markets with fewer dealers: going from four integrators to one lowered grower payments by eight percent (8%). This imbalance of negotiating power also exposes poultry growers to other risks.

For example, the considerable expense associated with building, maintaining, and upgrading poultry growing facilities places growers at financial risk if they are unable to realistically predict future income under a poultry growing arrangement and meet their financial obligations. Growers typically make investments in long-term assets—poultry houses that can last 20 years or more, and they typically take on long-term liabilities, in the form of 15-year mortgages, to finance those assets. However, live poultry dealers write production contracts for substantially shorter terms, with contract durations ranging from a few weeks (the time needed to raise one flock) to five years. Substantial disparities exist between the periods of time covered by the contracts and the mortgages on poultry housing, creating uncertainty around whether growers will be able to repay their debt and recoup their investments, and introducing ''hold-up'' risk problems.

Hold-up is the risk growers face at the time of contract renewal when live poultry dealers make contract renewal dependent on further grower investments not disclosed at the time of the original agreements.[40] This is of particular concern in production contracts because the capital requirements related to growing poultry are significant and highly specialized (that is, they have little value outside of growing poultry). As a result, growers entering the market are tied to growing poultry to pay off the financing of the capital investment. Growers have reported that they must accept unfavorable contract terms because they are tied to production to pay off lenders and they have few, if any, alternative dealers with whom they can contract. Long term, this behavior may result in underinvestment in broiler production. The hold-up problem is a manifestation of both market power and incomplete information.

C. Poultry Grower Earnings and Returns on Equity

Poultry growing is an intensive capital investment endeavor where returns can be unstable and fail to meet reasonable grower expectations. Grower capital investment is substantial, and contract payments received by U.S. poultry growers vary widely. Lack of transparency in returns to grower investment can create underinvestment and overinvestment problems. In 2011 data drawn from a nationally representative sample of growers, the mean payment received by contract growers was 5.77 cents per pound of farm weight. However, 10 percent of growers earned at least 7.02 cents per pound, while 10 percent earned less than 4.32 cents per pound.[41] The sample data ranged across all growers and all contract types, but research has also shown that payments can range widely within specific contract types and within individual grower pools, creating revenue uncertainty for growers.[42]

Perhaps even more concerning than the range of grower contract payments are the low returns on equity for poultry operations. According to USDA's Economic Research Service (ERS),[43] a special survey conducted in 2011 showed average returns on equity were negative for operations with one to two poultry houses, and increased with the size of the operation to a maximum of 2.7 percent among operations with six or more houses. These figures were well below rates of return on equity reported for manufacturing, mining, and trade corporations in the Quarterly Financial Reports of the U.S. Census Bureau for the same period. They were also below average rates of return on equity for large and midsize U.S. farms.

Growers must be able to evaluate their return on equity—a measure of a business's profitability relative to the equity invested in it—to remain solvent. However, many factors, including monopsonistic and oligopsonistic market structures, incomplete contracts, uncertainty about the required level of skill and involvement, and asymmetrical information, make calculation of return on equity difficult for growers. The structure of the contracts themselves results in such a wide range of potential grower financial outcomes that it is difficult for growers to make reliable profitability

[35] Steven Y. Wu and James MacDonald, ''Economics of Agricultural Contract Grower Protection Legislation,'' *Choices,* Third Quarter, 2015, pp 1–6.

[36] MacDonald (June 2014) Op. Cit.

[37] Merriam-Webster online dictionary: A monopsonist is one who is a single buyer for a product or service of many sellers. *https://www.merriam-webster.com/dictionary/monopsonist*; accessed 3/8/2022.

[38] Merriam-Webster online dictionary: Oligopsony is a market situation in which each of a few buyers exerts a disproportionate influence on the market. An oligopsonist is a member of an oligopsonistic industry or market. *https://www.merriam-webster.com/dictionary/oligopsonist*; accessed 3/8/2022.

[39] MacDonald, James M., and Nigel Key. ''Market Power in Poultry Production Contracting? Evidence from a Farm Survey''. *Journal of Agricultural and Applied Economics* 44 (November 2012): 477–490. See also, MacDonald, James M. *Technology, Organization, and Financial Performance in U.S. Broiler Production, EIB–126,* U.S. Department of Agriculture, Economic Research Service, (June 2014): 29–30.

[40] Vukina, Tom, and Porametr Leegomonchai. ''Oligopsony Power, Asset Specificity, and Hold-Up: Evidence from the Broiler Industry.'' *American Journal of Agricultural Economics* 88 (2006).

[41] MacDonald (June 2014) Op. Cit.

[42] Knoeber, Charles R. and Walter N. Thurman. ''Testing the Theory of Tournaments: An Empirical Analysis of Broiler Production.'' *Journal of Labor Economics* 12 (April 1994). Levy, Armando and Tomislav Vukina. ''The League Composition Effect in Tournaments with Heterogeneous Players: An Empirical Analysis of Broiler Contracts.'' *Journal of Labor Economics* 22 (2004).

[43] MacDonald (June 2014) Op. Cit., pp. 38–40. Data from the *Agricultural Resource Management Survey—Version 4, Financial and Crop Production Practices, 2011,* and U.S. Census Bureau, 2011 Quarterly Financial Report (QFR): Manufacturing, Mining, Trade, and Selected Service Industries. *https://www2.census.gov/econ/qfr/pubs/qfr11q4.pdf;* accessed 1/19/2022.

projections. Absent such information, growers face an ongoing risk of deception in their contracting and operational decisions, risks which AMS believes can be mitigated through the provision of the information and transparency provided under this rule.

D. Asymmetrical Information

As explained earlier, one symptom of incomplete contracts is asymmetrical information. This occurs when one party to a contract has more and/or better critical information than the other party. For example, because live poultry dealers determine grower pay, they have access to records of the payments made to each grower, and have information regarding the complete range of payments across growers with birds delivered for processing in each week. The individual grower—both existing and prospective—however, lacks the same ready access to this information. Additionally, dealers have information related to (and also control) strategic decision making that may include placement frequency, stocking densities, and input quality and distribution—factors that influence the weight and performance elements that comprise individual flock payments and influence grower payments in the long term. It is unlikely that poultry growers are privy to information about the range of grower payments or dealers' strategic decision making. As a result, they lack key information needed to make informed decisions with respect to the range of financial risks they face.

Prospective growers can draw upon information provided by poultry specialists in state cooperative extension services and by lenders, but those sources do not have live poultry dealers' internal data on the full range of payments or their frequencies and, as a result, typically base financial modeling and advice on average levels of payments received by growers, not on the full range of payments.[44] Existing growers know what they have been paid, and may elicit further information from other growers, but likewise lack complete integrator information on the range of grower payments, making it difficult for them to accurately project future earnings based on the past experience of similarly situated growers and, as such, to gauge their ability to meet financial obligations.

Some live poultry dealers provide pro forma income estimates to prospective growers and lenders. Grower advocate groups have complained these estimates are generally based on simple ''average pay'' projections, which are insufficient given fluctuations in grower payments, particularly under the tournament system.[45] AMS has observed these projections lack standardization making it difficult for growers to compare estimates among multiple dealers. Additionally, the assumptions underlying the projections such as number of placements, stocking densities, target weight are subject to dealer discretion and in many cases the estimates themselves are expressly disclaimed in the production agreement.

These risks are particularly acute when growers must make key investment decisions for their operation, such as whether or not to enter the poultry business and whether or not take on or invest in new or expanded facilities, all of which can be expected to involve incurring debt. AMS believes that the provision of the information in this rule will reduce the risks of these information asymmetries and enable growers to improve their decision-making and risk-management.

USDA's Farm Services Agency (FSA), which manages a loan guarantee program, has also recognized repayment reliability concerns related to informational asymmetries and their effect on poultry grower payments and total revenues.

In order to reduce FSA's exposure under the loan guarantee program, the FSA Handbook requires the following of poultry production contracts in order to assess their ''dependability.''[46] Contracts must:

- be for a minimum period of 3 years
- provide for termination based on objective ''for cause'' criteria only
- require that the grower be notified of specific reasons for cancellation
- provide assurance of the grower's opportunity to generate enough income to ensure repayment of the loan by incorporating requirements such as a minimum number of flocks per year, minimum number of bird placements per year, or similar quantifiable requirements.

Enhanced and more reliable transparency in the poultry production contracting process is likely to assist FSA's in effectuating the mandates under the loan guarantee program as set forth in its handbook.

E. Poultry Grower Concerns

In 2010, USDA held a series of workshops in conjunction with the Department of Justice to hear from producers about concentration and trade practice issues in Agriculture. Normal, Alabama, hosted one such session with an emphasis on the poultry industry. Globally, growers complained that their success or failure is dependent on factors controlled by their integrators. Further, growers are troubled by the lack of choice among integrators in many regional relevant markets, which further enhances the bargaining position of integrators.[47] Grower public comments at the workshop were consistent with numerous comments submitted to USDA on the 2010 and 2016 GIPSA rules and identified specific areas of concern in the poultry industry.

Growers expressed concerns about contract dependency, uncertainty of pay, and informational asymmetries related to farm revenues and debt. Poultry growers have indicated they lack control over and even information about certain crucial production factors controlled by live poultry dealers, such as the anticipated frequency and density of flock placements and bird target weight under poultry growing arrangements, factors that heavily influence grower payments on an individual flock basis and over the long term.[48]

Growers cited the level of control and discretion reserved to integrators under their contracts, remarking how discretionary decisions related to flock placements, housing specifications, tournament grouping,[49] and other production factors can significantly affect grower revenue and profitably. Many growers were worried that contract terms did not cover the time required to repay the debt on their farms, noting that additional capital investments, such as those necessitated

[44] See, for example, Doye, Damona Grace, et al. ''Broiler Production: Considerations for Potential Growers'' Oklahoma Cooperative Extension Service, (March 2017); Rhodes, Jennifer and Jonathan Moye. ''Broiler Production Management for Potential and Existing Growers'', University of Maryland Extension, (October 2017); and Cunningham, Dan L., and Brian D. Fairchild. ''Broiler Production Systems in Georgia, Costs and Returns Analysis 2011–2012.'' University of Georgia Cooperative Extension (June 2011).

[45] ''A Poultry Grower's Guide to FSA Loans,'' Rural Advancement Foundation International, July 2017, available at *https://www.rafiusa.org/blog/a-poultry-growers-guide-to-fsa-loans/.*

[46] USDA Farm Service Agency, *Guaranteed Loan Making and Servicing 2–FLP (Revision 1)* pp. 8–86 (October 2008). *https://www.fsa.usda.gov/internet/FSA_File/2-flp.pdf*; accessed 1/3/2022.

[47] See Domina, David A. and Robert Taylor. ''The Debilitating Effects of Concentration Markets Affecting Agriculture,'' *Drake Journal of Agricultural Law* 15 (May 2010): 61–108. *See also* Leonard, Christopher, *The Meat Racket* (2014).

[48] Transcript, United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshop May 21, 2010; Normal, Alabama.

[49] The effect of tournament groupings, or league composition, is an area requiring additional exploration and research. It is not directly addressed in this proposal.

by integrator's housing specifications, can plunge growers into further debt without assurances of adequate or stable returns. Growers indicated they do not have adequate information with which to assess original and additional capital investments because pay rates alone are insufficient for long-term revenue estimates without assumptions related to integrator discretionary production decisions.[50] Concerns have also been raised regarding the use of deficient and unreliable ''pro forma'' financial estimates during the contracting process.

Finally, poultry growers have complained to USDA about being prohibited by dealers from asserting their rights under the current regulations to discuss poultry growing contracts with government representatives, family members, lenders, and other business associates. Some growers allege they have been threatened or retaliated against for asserting those rights.

As explained in section II.A., AMS believes that poultry growing arrangements are often incomplete contracts that may be deceptive when omissions or inadequate descriptions of key terms mislead, camouflage, conceal, or otherwise inhibit growers' ability to assess the financial feasibility and expected value of investment. For example, for a grower to estimate future revenues, it is necessary for the grower to know how many flocks the dealer will place with the grower over a given time period. When contract terms do not establish the number of flocks a grower will receive during that time period, the grower could be misled or deceived into believing he will receive an optimistically high number of placements, which might increase the grower's willingness to contract with the dealer. This risk is particularly acute if the financial statements or estimates provided to the grower paint only the most optimistic picture possible regarding the returns that may be possible under complex and opaque payment arrangements, such as the commonly used tournament ranking system, rather than the range of realistically expected outcomes. If poultry contracts contain more material terms relating to revenue over the life of the agreement, we believe the potential for deception is reduced significantly.

AMS considers this imbalance of information, or ''asymmetrical information,'' as described in the previous section, an important consideration for this rulemaking. We recognize that neither dealers nor growers can predict market conditions far into the future. Yet given the substantial investment from the grower, together with the greater ability for dealers to monitor market trends, adjust contracting, and otherwise hedge risks, we believe these upfront and ongoing information asymmetries could be effectively mitigated through the disclosure regime that will be outlined later in this rule.

AMS believes that by providing critical information that addresses the risks that growers face, the rule would encourage greater certainty and confidence among growers, encourage investment, and enhance the overall competitive market for grower services. As for growers' ability to assert their rights without fear of retaliation, we note that the current regulations, at 9 CFR 201.100(b), already require live poultry dealers to allow poultry growers to discuss the terms of their contracts with government agencies, family members, and business associates and advisors, regardless of confidentiality provisions in the contracts. However, it may be appropriate to shed more light on those rights. AMS believes the proposed transparency enhancements would further aid growers in identifying illicit conduct of this type.

III. Poultry Grower Pay Systems

As discussed in section I.C.3.—Poultry Grower Compensation, the majority of poultry growers are paid on an individual flock basis, where the calculation for grower payments can be expressed as: Farm Weight (in pounds) × Feed Conversion (in dollars) = Grower Pay. Farm weight is a nearly universal measure among all poultry grower pay systems; however, the metrics and formulas for determining feed conversion vary among pay systems and between integrators.

Poultry grower pay systems can be categorized as either ranking or non-ranking. The most common non-ranking pay system is called ''fixed-performance.'' Pay systems that rank growers are called ''poultry grower ranking systems'' or ''tournaments.'' In this section we focus on the characteristics of—and challenges associated with—tournament pay systems, but we begin with a brief description of fixed-performance pay systems for comparison.

A. Fixed-Performance Pay Systems

Under fixed-performance production contracts, growers are paid a base rate for each animal or for the farm weight delivered to the processor. These contracts generally adjust payments based on fixed performance standards. For example, farmers with lower animal mortality or higher conversion of feed to live weight might receive higher pay. These are called fixed performance contracts because although compensation may fluctuate, the performance elements are tied to fixed standards.[51] In contrast, under grower ranking pay systems, performance elements are relative standards tied to the performance of other growers.

B. Tournament Pay Systems

The majority of growers producing poultry under production contracts are paid under a poultry grower ranking or ''tournament'' pay system.[52] Under poultry grower ranking systems, the contract between the live poultry dealer and the poultry grower provides for payment to the grower based on a grouping, ranking, or comparison of poultry growers delivering poultry to the dealer during a specified period. In a simplified example, the live poultry dealer places flocks with ten growers under contract to deliver the same size of finished poultry to the dealer's processing plant at the end of a specified growout period. Upon harvest, each grower's performance (*e.g.,* farm weight and feed conversion) is determined. The dealer then compares individual grower results against average results for all growers in the group, and ranks individual growers according to their relative performance within the group of ten growers. Grower base pay rate is adjusted by the grower's deviation from average within the tournament grouping for that specific growout period. For example, a contract-based pay rate of $.06 per pound might be adjusted to $.0725 for an above average grower, while a below average grower may be paid $.048.

Payments under tournament contracts still vary with flock mortality and feed conversion, but in tournament contracts, the performance elements are not fixed targets. The performance elements are compared to average performance results from a tournament group, which is group of growers delivering poultry to the plant during the same time period (usually within a week). Growers who exceed the group's average performance get higher payment, while growers who

[50] Transcript, United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshop May 21, 2010; Normal, Alabama.

[51] Tsoulouhas, Theofanis, and Tomislav Vukina. ''Regulating Broiler Contracts: Tournaments Versus Fixed Performance Standards.'' *American Journal of Agricultural Economics* 83 (2001).

[52] MacDonald (June 2014) Op. Cit. See footnote 20 on page 27 citing ARMS data from 2011 that reported 97% of broilers are grown under contract, with 93% of contracts tied to relative performance.

fall short of the group average receive lower pay. The grower payment equation's feed conversion variable is modified by its deviation from average performance, and a specific grower's pay varies with his/her ranking against the average. Grower pay rates vary depending on the performance of other growers, even if a specific grower's performance remains unchanged or even improved compared to their performance in previous growout periods.

IV. Poultry Grower Ranking Systems

A. Tournament Settlements

9 CFR 201.100(d) and 9 CFR 201.100(f) are important parts of the existing tournament payment disclosure regime under the Packers and Stockyards Act. This proposal builds on the existing disclosure concepts by incorporating new transparency into the distribution of inputs, which is an area of particular concern to growers.

Currently, 9 CFR 201.100(d) requires all live poultry dealers to prepare and furnish a settlement sheet to a poultry grower at the time of settlement. Under that regulation, the settlement sheet must contain all information necessary to compute the grower's payment, including, if applicable, the number of birds marketed, the total weight and average weight of the birds, and the payment per pound. Further, § 201.100(f) requires live poultry dealers who pay growers under a tournament system to furnish growers with a grouping or ranking sheet at the time of settlement that shows the grower's precise position in the grouping or ranking sheet for that period. Currently, the grouping or ranking sheet need not disclose names of other growers, nor the housing specifications for each tournament participant, but must show the actual figures used to compute each grower's position within the ranking for that period. Neither section currently requires the live poultry dealer to provide information about the distribution or nature of integrator inputs among settlement participants.

The tournament ranking sheet required under § 201.100(f) provides growers with numeric data comparing their performance and the performance of other growers in the tournament. While the numeric data describes the relationship between grower performance, as assessed by the integrator, and settlement payments, its value is limited without information about the distribution of integrator inputs among tournament participants. Poultry grower commenters on the 2010 and 2016 GIPSA rules stated that without knowing how inputs they receive compare to inputs provided to other growers within their tournaments, growers cannot determine whether differences in pay are due strictly to grower skill or to other factors beyond their control.

B. Tournament Payments as a Measure of Grower Skill, Effort, and Innovation

In comments submitted to USDA on the 2010 and 2016 GIPSA rules, live poultry dealers suggested that tournament systems benefit poultry growers by offering financial incentives and rewards to growers who invest time and effort into their poultry growing operations. They asserted that the competition inherent in tournaments fosters grower innovation and increased efficiency, and rewards those growers who are the most efficient and provide the best services. They also stated that tournament pay systems reward above-average growers that are willing to take risks or improve their production systems. One poultry processing company stated that contract broiler growers are paid for their services based on a formula that rewards efficiency, ingenuity, and good animal welfare and animal husbandry practices.

Comments from some poultry growers and others associated with the industry concurred with those of processors, indicating that the opportunity to earn higher compensation for superior performance under tournament systems motivates above-average growers to work hard, invest in their facilities, and utilize innovative technology.

At the same time, other growers dispute this. Indeed, growers often comment on wide swings in grower rankings from flock to flock, where the same individual grower ranks high in one tournament and much lower in another. One available analysis confirms significant volatility in grower rankings from flock to flock,[53] This suggests that while grower experience and skills can lend to consistently successful individual flock performance, a grower's relative success in tournaments might be attributed to other factors.

Input variability is commonly cited by grower commenters as a key explanation for ranking volatility. We discuss the distribution of inputs and the effects of input variability on tournament rankings and grower payments in the following sections.

[53] Taylor, C. Robert, and David A. Domina, ''Restoring Economic Health to Contract Poultry Production.'' Report prepared for the Joint U.S. Department of Justice and USDA/GIPSA Public Workshop on Competition Issues in the Poultry Industry (May 2010).

C. Distribution of Inputs Among Tournament Participants

Grower experience and skill, the technical specifications and relative sophistication of the housing, and other factors, such as the makeup of tournament groupings or inconsistent grower effort, may all affect performance. In this section, we explain how integrator decisions about inputs provided to tournament growers can also impact growers' relative performance.

Under the tournament system, dealers control the source of inputs and the distribution of those inputs to growers. In section I.C.4.—Live Poultry Dealer Inputs—AMS has provided evidence that the range of inputs is nonhomogeneous. The range of inputs is selected to satisfy customer or product requirements, as well as efficiency in the slaughter process, presumably at the lowest costs. Input distribution has not been studied extensively, and little information is available in the public domain. In response to prior USDA rulemaking efforts, dealers have denied or downplayed the significance of input variability and its effect on bird performance. The existence of non-homogeneity and the persistence of grower complaints raise questions about dealer input allocation practices and the extent to which tournament parity and cost efficiency are balanced, or whether other factors may also be at play.

For example, if a complex has three breeder farms with different aged flocks, it may be costly or even impracticable for integrators to evenly distribute chicks from the three breeder flocks in identical ratios to all settlement participants. Similar cost considerations might play a role in distribution where breed and sex variation are present. In another example, supply considerations may play a role in stocking density differences among settlement participants. As a result, growers settled together could be allocated flocks with some level of variance in attributes. None of those input variances would be materially affected by incentives for uniformity of product or processing plant efficiency; they would be premised cost efficiencies.

D. Input Variability and Grower Payment

Tournament payments are based on relative measurements, including poultry mortality, morbidity, feed use efficiency, and growth rate, among tournament participants. As discussed earlier, the attributes of various integrator-controlled inputs can affect those measurements. Therefore,

variability between the inputs provided to growers in a tournament can affect relative outcomes. Here we briefly review those inputs and explain how uneven distribution of inputs may affect tournament grower rankings and payments.

1. *Stocking Density:* Variability in stocking densities among poultry growers in settlement pools are likely to result in farm weight and feed conversion disparities among settlement participants. If one or more growers in a tournament receive flocks with fewer birds than what would be optimal, and those flocks do not achieve optimal feed conversion efficiency, those growers may not rank as high as their tournament competitors who receive flocks of optimal stocking density.[54] Thus, the input variability has the potential to affect tournament grower payments.

2. *Breed Ratios:* As described in section I.C.4.b., different poultry breeds convert feed to weight gain with varying efficiency. Thus, differences between the breeds or ratios of breeds of poultry flocks placed with individual growers within a tournament group may ultimately affect each grower's relative performance and tournament ranking. Depending on the specific breeds involved, USDA has connected variances in the distribution of poultry breeds or breed ratios with farm weight disparities,[55] affecting grower pay.

3. *Gender ratios:* As explained in section I.C.4.c., The majority of integrators use straight-run (not sorted by gender) flocks to supply farms. AMS would not view the placement of randomized straight-run flocks as an input variability if all tournament growers received randomized straight-run flocks, since the ratio of males to females in each flock would be randomized and not dictated by the integrator. However, integrators placing sexed flocks, or integrators supplementing straight-run flocks with sexed flocks, may create input variability in the distribution of birds that could result in farm weight and feed conversion disparities.

4. *Breeder Flock Age:* As discussed in section I.C.4.d., the age of breeder flocks is correlated with egg and chick size, mortality, and eventual weight gain. Variability between the ages of breeder flocks producing the young poultry placed with different growers in a tournament may result in farm weight and feed conversion disparities at the end of growout, which may impact the rankings and payments to individual growers in that tournament.

5. *Breeder Flock Health:* Placing birds from breeder flocks of varying health with tournament participants may affect each flock's performance and thus each grower's ranking and pay. Other factors, such as variations between facility sanitation practices and performance may exist among breeder facilities within the same complex, and may impact progeny growout performance, creating an input variability when poultry sourced from multiple breeder farms are settled together.

6. *Feed Disruptions:* As described in section I.C.4.f., bird growth may be affected by feed disruptions (where poultry go without feed for a certain length of time), possibly resulting in less farm weight, which affects grower tournament rankings and payments. Feed disruptions for any cause, if they do not affect all growers equally, may constitute an input disparity that can affect grower ranking and pay.

7. *Medications:* The integrator may find it necessary to supply one or more flocks with veterinary medicines or supplements during flock growout. Such treatments, when provided on a flock-by-flock basis, may impact relative flock performance and grower pay.

As described in the previous section, an integrator's input allocation decisions are impacted by cost efficiencies that may be inconsistent with individual growers' interests, including risk management and earnings maximization. But variability in integrator-provided inputs among settlement participants can ultimately influence settlement rankings and payments. Thus, tournament participants prefer some level of parity in input distributions, or at least mitigation of any disparities, in order to evaluate whether grower compensation is related to grower management and skill or correlated with ''favorable'' inputs.

E. The Need for Transparency

Input variability among settlement participants have long been a point of contention between growers and integrators because growers are not involved in input distribution decisions, and any balancing between cost efficiency and parity is not transparent. With respect to this input variability, growers have repeatedly complained in public forums and to USDA of retaliation, discrimination, and other disputes arising in connection with distributions of inputs, including in ways that result in significant economic harm to growers.[56]

AMS has not identified research regarding whether variability in inputs between tournament growers affects grower outcomes. However, some existing research establishes the effects of certain inputs on poultry growth and feed conversion.

We believe growers' assertions regarding the connection have merit. AMS is aware that integrators collect input information for private use,[57] although we do not know whether it includes information about how inputs are distributed among individual growers. Nevertheless, growers complain that this information, which could be useful to them in flock management, is not generally provided to them.

At the 2010 Normal, Alabama, workshop referenced earlier, contract poultry growers further raised significant concerns regarding the design and operation of tournament systems. Commenters asserted that the high degree of integrators' control over the inputs, the reliance that growers have on the inputs for outcomes under the system, and the opacity of the tournament calculations fostered a range of risks, including risks relating to deception. These include the inability to verify the accuracy of payments, the inability to measure and manage risks, and the ways in which tournament systems can mask or facilitate hard-to-detect forms of discrimination or retaliation for disputes arising under the poultry growing arrangement.

These concerns reflect similar issues of market power and information asymmetry discussed earlier. Where integrators have made business decisions to procure and distribute inputs in a manner that most suits their cost structure and business strategies, poultry growers have limited- or no ability to negotiate, including for information that would enable them to avoid, mitigate, or manage the risks arising from the integrator's decisions. Growers may or may not be able to discern from a visual inspection of the flocks certain important information,

[54] Stocking density is a function of the desired weight of uniformly sized birds at harvest. A placement with a specified number of smaller birds would have the same density as a placement with the same number of larger birds. Smaller birds would just take somewhat longer to get there.

[55] *Tyson Farms, Inc.* 71 Agric. Dec. 1065, 1160 (U.S.D.A. 2012).

[56] See, *e.g.,* Transcript, United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshop May 21, 2010, Normal, Alabama; Leonard, Christopher, *The Meat Racket* (2014).

[57] For example, integrators may contract with Agristats, a chicken, turkey, commercial egg, and swine industry research company, to collect input information and compare such information against similar organizations in the industry. Agri Stats, Inc. *Partnership and Services, https://www.agristats.com/partnership.*

such as breeder age, to which the integrator is privy. Other information, such as bird sex, may be more readily available to the integrator than to the grower.

Their lack of information at the time of placement about the specific inputs delivered to growers exposes them to the performance risks described in section IV.D. associated with the variability of those inputs. Those performance risks may manifest in in tournament ranking. Similarly, the absence of input distribution information at the time of settlement undermines growers' ability to manage their operations to address those performance risks. In both cases, growers are disadvantaged in their performance by a lack of information outside of their control. Conversely, the ability of growers to monitor and measure input differences is especially important for mitigating risks relating to the accuracy of payments and the ways in which tournament systems may mask or facilitate hard-to-detect forms of discrimination or retaliation for disputes.[58]

AMS believes that tournament growers need information about input distribution—particularly at the stage where the input is provided—when they could apply, to the extent possible, their experience and skills to the adjustment of flock management as necessary in response. For example, a grower is informed he has received a salmonella infected broiler flock, which will present with loose, runny stools that can cause floors to cake quickly, leading to burnt paws and increased coccidiosis. A grower aware of the condition can manage the flock through use of migration fences early in flock and with increased ventilation to remove excess ammonia and to help dry floors. These management adjustments may be departures from normal growout procedure, but could lower mortality, decrease condemnations, and result in higher farm weights and feed efficiency. Thus, improved outcomes would benefit growers and integrators alike.

Further, growers seek transparency regarding flock input distribution among tournament participants so they can individually assess the relationships between input variability, grower management and skills, and tournament payments. Such information is also particularly important, when shown together with housing specifications, for growers to assess the relative value and necessity of making additional capital investments. Put another way, failure to make this information available to growers puts them at risk of making very expensive investments with very little insight into their value and risks involved.

For both at placement and settlement disclosures, growers have expressed a mistrust of live poultry dealers when information about flock placements is not transparent. Improving transparency is intended to reduce concerns relating to input distribution and may help establish a higher degree of trust in the integrity of the marketplace.

Finally, relative ranking systems (tournament) premised on grower skill, effort, and innovation should measure and compensate based upon those merits. Pay systems highly correlated with individual input variability may be inconsistent with the merit premise and demonstrate misrepresentations and deception in the operation of tournament pay systems.

V. Proposed Regulations

AMS proposes to address concerns related to market power imbalance and asymmetrical information in poultry grower contracting by revising the regulations at 9 CFR part 201 that effectuate the Packers and Stockyards Act. AMS intends the proposals to better balance the quantity, quality, and type of critical information poultry growers, prospective poultry growers, and live poultry dealers have as they enter into and operate under poultry growing arrangements. AMS expects that these proposed rules would improve transparency and reduce the risk of deception in the contracting process. This section provides detailed descriptions and explanations for the proposals.

A. Definitions

Section 201.2—Terms defined—of 9 CFR part 201 provides definitions for terms used in the regulations. AMS proposes to revise § 201.2 by removing the paragraph designations within the section, reorganizing the definitions alphabetically, and adding definitions for new terms used in the proposed rule. Proposed additions to the list of terms defined in § 201.2 are described as conforming changes in connection with the proposed regulatory changes described below.

Additionally, to ensure a common understanding of the use and meaning of certain terms already used in the regulations and in the proposed regulatory revisions, AMS proposes to incorporate into § 201.2 the statutory definitions for those terms. Specifically, the term *poultry grower* means any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such person or by another, but not an employee of the owner of such poultry. The term *live poultry dealer* means any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another, if poultry is obtained by such person in commerce, or if poultry obtained by such person is sold or shipped in commerce, or if poultry products from poultry obtained by such person are sold or shipped in commerce. The term *commerce* means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. Finally, the term *poultry growing arrangement* means any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another's instructions, for slaughter.

AMS invites comments on proposed additions to the list of definitions, including those described later in this section. Please explain fully all views and suggestions, supplying examples and data or other information to support your views where possible.

B. Disclosure

To address concerns identified in the section on *Poultry Growing Arrangements* earlier in this document, including industry concerns related to dealer transparency in poultry growing arrangements, AMS proposes to amend § 201.100—Records to be furnished poultry growers and sellers. Currently, 9 CFR 201.100 describes the documents that live poultry dealers must provide to poultry growers within certain timeframes. Paragraph (a) of § 201.100 requires a dealer to provide the grower with a true written copy of the offered poultry growing arrangement on the date the dealer provides poultry housing specifications to the grower. Paragraph (b) requires live poultry dealers to allow growers to discuss the terms of poultry growing arrangement offers with a Federal or State agency, the growers' legal and financial advisors and lenders, other growers for the same dealer, and

[58] One example of deception risk is the alleged practice of dealers offering more lucrative contracts to attract new growers but then reducing the pay once the grower is secured and in debt, (Taylor and Domina 2010; Vukina and Leegomonchai 2006). See also Vukina, T. 2001. Vertical integration and contracting in the US poultry industry. *Journal of Food Distribution Research* 81: 61–74.

family members or other business associates with whom growers have valid business reasons for consulting about the offered poultry growing arrangements. Paragraph (c) specifies required contents of the poultry growing arrangement, including contract terms and information about payment calculations and performance improvement plans. Paragraph (d) requires dealers to furnish growers with settlement sheets and supporting documents showing how grower pay is calculated. Paragraph (e) requires dealers to obtain USDA condemnation or grading certificates for poultry and to provide copies to growers at settlement. Paragraph (f) requires dealers to provide growers in a poultry grower ranking system copies of grouping or ranking sheets that show growers their precise positions within the grouping or ranking for that period, as well as the actual figures rankings are based upon. Paragraph (g) requires dealers who purchase live poultry to provide detailed purchase invoices, including applicable USDA condemnation or grading certificates, to poultry sellers at the time of settlement. Finally, paragraph (h) requires dealers to provide notices regarding termination or non-renewal of poultry growing arrangements to affected growers at least 90 days before termination. Under paragraph (h), dealers must provide the reason for a termination, the effective date of the termination, and information about grower appeal rights with the dealer. Further, dealers must provide the opportunity for growers to notify dealers in writing at least 90 days before the scheduled termination of a poultry growing arrangement of the grower's intent to terminate the arrangement.

Specifically, AMS proposes to amend § 201.100 by revising paragraph (a); redesignating paragraphs (b) through (h) as paragraphs (h) through (n), respectively; moving current paragraph (f) to a new regulatory section that addresses poultry grower ranking systems specifically; adding new paragraphs (b) through (g); and revising redesignated paragraph (i).

Proposed revisions to § 201.100(a) would modify the heading to read ''Disclosures and records to be furnished poultry growers and sellers'' and would require the dealer to provide the prospective or current poultry grower with the Live Poultry Dealer Disclosure Document (the Disclosure Document), as described in proposed new paragraph (b) of the section, in addition to the true written copy of the poultry growing arrangement, under three different scenarios. A proposed conforming change to § 201.2 would define the term *prospective poultry grower* to mean a person or entity with whom the live poultry dealer is considering entering into a poultry growing arrangement. AMS would add this definition to distinguish between a current or existing poultry grower who has previously entered into a poultry growing arrangement with the dealer and a grower who has not signed a contract. The proposed requirements for live poultry dealers are somewhat different depending on the status of growers with whom they are working.

Under the first scenario, provided in proposed new § 201.100(a)(1), a dealer seeking to renew, revise, or replace an existing poultry growing arrangement (or newly establish a poultry growing arrangement) that does not contemplate modifications to existing housing specifications would be required to provide both the poultry growing arrangement and the Disclosure Document at least seven days before the dealer executes the poultry growing arrangement. This proposal is intended to give growers adequate time to consider all the information provided and consult with others as needed before committing to the new, revised, or replacement poultry growing arrangement. Because this scenario involves growers already familiar with their dealers, and because in this scenario the contract renewal does not involve additional capital investment, we believe seven days would provide time for adequate review. AMS proposes to exempt certain small businesses from this requirement, as described in the discussion about proposed new § 201.100(e)below.

AMS proposes a conforming change to § 201.2 to add a definition for *housing specifications* to mean a description of—or document relating to—a list of equipment, products, systems, and other technical poultry housing components required by a live poultry dealer for the production of live poultry. Live poultry dealers commonly develop multiple housing specifications. Accordingly, by defining this term, AMS does not intend to limit live poultry dealers to a single housing specification. Another proposed definition would define *Live Poultry Dealer Disclosure Document* to mean the complete set of disclosures and statements that the live poultry dealer must provide to current or prospective poultry growers.

Under a second scenario, as described in proposed new § 201.100(a)(2), a dealer seeking to enter into a poultry growing arrangement that would require the grower to make an original capital investment to comply with the dealer's housing specifications would be required to provide the grower with a true written copy of the poultry growing arrangement, the housing specifications, the Disclosure Document, and a letter of intent simultaneously. Because the Disclosure Document and letter of intent would be required to accompany the housing specifications, growers would have more information with which to assess economic and financial considerations prior to obtaining financing for the original capital investment. This proposal is intended to give the grower and their lender adequate time to consider all the information provided and consult with others as needed, and to provide assurance with which to move forward with the necessary financing. A letter of intent would signal to the prospective poultry grower and their prospective lender that the dealer's contract offer is earnest and that the preliminary terms of the agreement should be assessed to determine practical and financial feasibility. Further, having the letter of intent would allow the poultry grower to discuss proposed or required upgrades to existing housing specifications with lenders and other advisors while considering whether to make those modifications and financial investments. Growers, working with their lenders, can establish an appropriate period to review and assess the disclosure document and letter of intent prior to undertaking the investment.

A proposed conforming change to § 201.2 would add a definition for *letter of intent* to mean a document that expresses a preliminary commitment from a live poultry dealer to engage in a business relationship with a prospective poultry grower and that includes the chief terms of the agreement.

Another proposed revision to § 201.2 would add a definition for *original capital investment* to mean the initial investment for facilities used to grow, raise, and care for poultry or swine. The proposed definition for *original capital investment* uses similar language as the existing definition for *additional capital investment,* and is intended to help differentiate between situations where a new or prospective grower would be required to make an initial capital investment for poultry housing in order to become a poultry grower and where a current grower has already made a capital investment related to poultry housing requirements.

Finally, under the third scenario, as described in proposed new § 201.100(a)(3), a live poultry dealer seeking to offer or impose modifications to existing housing specifications that

could reasonably require the current poultry dealer to make an additional capital investment would be required to provide the grower simultaneously with a true written copy of the poultry growing arrangement, modified housing specifications, the Disclosure Document, and a letter of intent. AMS expects the majority of growers will seek financing for additional capital investments, and the simultaneous production of the three documents is designed to (1) provide growers with improved information with which to assess the new capital investment, and (2) allow growers to establish appropriate timelines for contemplating the investment. *Additional capital investment,* as it pertains to poultry production, is defined in the current regulations at § 201.2(n) as a combined amount of $12,500 or more per structure paid by a poultry grower over the life of the poultry growing arrangement beyond the initial investment for facilities used to grow, raise, and care for poultry. The term includes the total cost of upgrades to the structure, upgrades of equipment located in and around each structure, and goods and professional services that are directly attributable to the additional capital investment. The term does not include costs of maintenance or repair.

The requirement in current § 201.100(a) to provide true written copies of the poultry growing arrangement, whether to establish a new arrangement or to renew, revise, or replace an existing arrangement, helps improve transparency in the new or ongoing relationship between the live poultry dealer and the prospective or current poultry grower, which mitigates the information asymmetries and other deception-related concerns discussed above. AMS would retain that requirement under the proposed rule. AMS believes providing written documents helps ensure that both parties have the opportunity to read and understand all the terms of the poultry growing arrangement. Further, the requirement in current § 201.100(a) to provide a copy of the poultry growing arrangement at the same time housing specifications are disclosed ensures transparency about the dealer's expectations regarding the grower's responsibility under the arrangement. Under the proposed revisions to § 201.100(a), and in the three scenarios described above, the required documents and the timelines for providing them are determined according to whether new or revised housing specifications are involved.

In each of the three scenarios presented above, the live poultry dealer must provide the grower with the Disclosure Document. The Disclosure is a set of documents prepared by the live poultry dealer. AMS believes providing the Disclosure Document to growers along with the true written copy of the poultry growing arrangement, housing specifications, and letter of intent, where applicable, would help mitigate the asymmetric information problem described earlier in this document by giving growers more information with which to assess poultry growing arrangements and efficiently allocate resources.

The contents and format of the Disclosure Document cover pages would be provided in proposed new § 201.100(b)—Prominent disclosures. Proposed § 201.100(b) would specify the elements to be included with the cover pages of the Disclosure Document, including basic information about the live poultry dealer, key points in the poultry growing arrangement, and precise language for certain notices the dealer must make to the grower. In conjunction with the requirement to include specific language in the Disclosure Document, AMS is requesting Office of Management and Budget (OMB) approval of a new information collection, as described more fully in the Paperwork Reduction Act section of this proposed rule. AMS is proposing to provide a downloadable and printable electronic form containing the required language described in proposed § 201.100(b). The proposed form is for the use of live poultry dealers and is intended to reduce the burden of creating such a form and simplify compliance with the requirement to make certain notifications to poultry growers.

Proposed new § 201.100(b)(1) would require the Disclosure Document cover page to include the title ''LIVE POULTRY DEALER DISCLOSURE DOCUMENT'' in capital letters and bold type. Proposed § 201.100(b)(2) would require the live poultry dealer to list their name, type of business organization, principal business address, telephone number, email address, and if applicable, primary internet website address. Proposed § 201.100(b)(3) would require the dealer to specify the length of the term of the poultry growing arrangement. Including this information at the front of the Disclosure Document clearly identifies for growers the live poultry dealer and the associated poultry growing arrangement under consideration.

Under proposed § 201.100(b)(4), the live poultry dealer would be required to include a notice to the grower that, ''The income from your poultry farm may be significantly affected by the number of flocks placed on your farm each year, the stocking 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. Please carefully review the information in this document.'' Then, under proposed § 201.100(b)(5), the dealer would be required to state the minimum number of poultry placements and the minimum stocking density, which is the ratio that reflects the minimum weight of poultry per facility square foot the live poultry dealer intends to harvest from the grower following each growout.

New poultry growers may not understand how the discretionary actions of live poultry dealers affect grower payments. The majority of poultry growers are paid on the basis of farm weight multiplied by a feed conversion variable. A live poultry dealer exercising discretion in placements, stocking density, and target weight is directly affecting that poultry weight basis. Cautioning growers about the potential impact of dealer-controlled inputs and providing growers with the minimum number of flocks and minimum stocking density of flocks to be placed with the grower annually under the poultry growing arrangement would help growers assess the projected baseline value of their poultry growing arrangement. As discussed above, the provision of this information would mitigate the information asymmetries and other deception-related risks AMS has identified. It would enable growers to more accurately measure their financial commitments and risks based on information that they would otherwise be unable to obtain. It would also mitigate the risks of being attracted by the integrator or any other party into a poultry growing arrangement, or an additional capital expenditure in furtherance of one, based on overly optimistic scenarios.

AMS proposes to make conforming changes to § 201.2 by adding definitions for the terms *placement, minimum number of placements, growout, stocking density,* and *minimum stocking density. Placement* would be defined as the delivery of a poultry flock to the poultry grower for growout. *Minimum number of placements* would mean the least number of flocks of animals the live poultry dealer will deliver to the grower for growout annually under the terms of the poultry growing arrangement. *Growout* would be defined as the period of time between placement of livestock or poultry on a farm and the harvest or delivery of such animals for

slaughter, during which the feeding and care of such livestock or poultry are under the control of the farmer. *Stocking density* would be defined to mean a ratio that reflects the number of birds in a placement, generally expressed as head or pounds per square foot of the poultry growing facility or facilities. *Minimum stocking density* would be defined to mean the ratio that reflects the minimum weight of poultry per facility square foot the live poultry dealer intends to harvest from the grower following each growout.

Under proposed § 201.100(b)(6), the live poultry dealer would be required to include one of two alternative statements, depending on whether the offered poultry growing arrangement includes housing specifications that require or could reasonably require an original or additional capital investment under one of the scenarios described earlier in connection with proposed § 201.100(a). If the new, renewed, revised, or replacement poultry growing arrangement does not contemplate modifications to existing housing specifications, the dealer would include the statement in proposed § 201.100(b)(6)(1) in the Disclosure Document cover pages. The statement explains the grower's right to read the Disclosure Document and all accompanying documents carefully, and notes that the live poultry dealer is required to provide the current or prospective poultry grower with the Disclosure Document and a copy of the poultry growing arrangement at least seven calendar days before the dealer executes the poultry growing arrangement. Alternatively, if the dealer offers a new poultry growing arrangement that would require the current or prospective poultry grower to make an original capital investment, as in proposed § 201.100(a)(2), or offers or imposes modifications to existing housing specifications that could reasonably require the current poultry grower to make an additional capital investment, as in proposed § 201.100(a)(3), the dealer would be required to include the statement in proposed § 201.100(b)(6)(ii). The statement explains the grower's right to read the Disclosure Document and all accompanying documents carefully, and notes that the live poultry dealer is required to provide the poultry grower with the Disclosure Document, a copy of the poultry growing arrangement, the new or modified housing specifications, and the letter of intent simultaneously. Inclusion of one of these statements in the Disclosure Document cover pages is intended to notify poultry growers of their rights under the regulations and indicate what documents they should receive from the live poultry dealer within the described timeframes.

Under proposed § 201.100(b)(7), the live poultry dealer would be required to include a statement notifying the poultry grower that the terms of the poultry growing arrangement will govern the grower's relationship with the live poultry dealer's company. The proposed statement would further notify the poultry grower of their right, notwithstanding any confidentiality provision in the poultry growing arrangement, to discuss the terms of the poultry growing arrangement and the Disclosure Document with a Federal or State agency; the grower's financial advisor, lender, legal advisor, or accounting services representative; other growers for the same live poultry dealer; and a member of the poultry grower's immediate family or a business associate. The proposed statement would explain that a business associate is a person not employed by the poultry grower, but with whom the current or prospective grower has a valid business reason for consulting when entering into or operating under a poultry growing arrangement.

AMS believes requiring this statement in the Disclosure Document cover pages would help growers understand their rights under the Act and the regulations and avert deception of growers. In the past, industry stakeholders have reported to USDA that they believed the terms of their poultry growing arrangements forbid growers from discussing those arrangements with Federal and State agencies, other growers for the same live poultry dealer, and other advisors. Commenters on previous proposed rulemakings have reported fearing reprisals from live poultry dealers for discussing their poultry growing arrangements with others, although the current regulations specify, at § 201.100(b), that live poultry dealers must allow poultry growers to do so. The proposed requirement to include this statement in the Disclosure Document cover pages would advise poultry growers that they have the right to discuss the terms of the poultry growing arrangement with the entities listed, regardless of confidentiality provisions that may be included in the arrangement. Further, AMS is proposing to redesignate § 201.100(b) as § 201.100(h) and to revise the language to provide that the live poultry dealer cannot prohibit current or prospective poultry growers from discussing the terms of a poultry growing arrangement offer or the accompanying Live Poultry Disclosure Document with the entities listed above. The remainder of redesignated § 201.100(h) would remain unchanged.

Finally, proposed § 201.100(b)(8) would require the live poultry dealer to include the following sentence in bold type in the Disclosure Document cover pages: ''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.'' With this language, AMS intends to clarify that the Disclosure Document is not subjected to agency review prior to submission to poultry growers, and that legal recourse may be available for some present and future controversies related to the Disclosure Document and the poultry growing arrangement.

Proposed § 201.100(c)—Required disclosures following the cover page—would specify the information live poultry dealer must provide in the Disclosure Document following the cover pages. Under proposed § 201.100(c)(1), the dealer would be required to provide a summary of litigation over the previous six years between the live poultry dealer and any poultry grower, including the nature of the litigation, its location, the initiating party, a brief description of the controversy, and any resolution. Information about a live poultry dealer's litigation with poultry growers within the relevant period, particularly the basis of the litigation and the volume of litigation relative to the number of growers with whom the dealer contracts, would help growers identify conflict origins and better assess potential risk of conflict.

Proposed § 201.100(c)(2) would require the live poultry dealer to provide a summary of all bankruptcy filings in the previous six years by the dealer and any parent, subsidiary, or related entity of the live poultry dealer. Bankruptcy of the live poultry dealer poses a very real financial risk to grower financial returns. It is unclear to AMS to what extent lenders analyze these issues. While bankruptcy proceedings should be public, that does not mean growers would be aware of the proceedings or where the live poultry dealer might be in an ongoing process. Recent or current bankruptcy filing is an indicator relating to the financial health of the live poultry dealer, which a poultry grower may need to consider when deciding whether to enter or continue a contractual relationship with the dealer.

Proposed § 201.100(c)(3) would require the live poultry dealer to provide a statement that describes the

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. AMS believes it is important for poultry growers to have this information when considering a poultry growing arrangement, because growers may encounter future scenarios where they choose or are forced to exit poultry farming. These scenarios might include the unfortunate death or disability of the grower or the prospect of other occupational opportunities, etc. However, in some situations, farm sales and assignments might be contingent on approval from the live poultry dealer. Growers informed of these policies and procedures would have the opportunity to develop a coherent strategy, should they desire to exit poultry farming.

Under § 201.100(d)—Financial disclosures—of this proposed rule, live poultry dealers would be required to provide certain additional information in the Disclosure Document. Under proposed § 201.100(d)(1), dealers would be required to provide a table showing average annual gross payments to poultry growers for the previous calendar year. The table would be organized by housing specification as required for growers in each complex located in the United States that is owned or operated by the live poultry dealer.[59] The table would be required to express average payments on the basis of U.S. dollars per farm facility square foot. Under § 201.100(d)(2), live poultry dealers would be required to provide tables showing quintiles of average annual gross payments to poultry growers at the local complex for each of the previous five years.[60] Again, average payments would be expressed on the basis of U.S. dollars per farm facility square foot. Further, the required tables would be organized by year, housing specification tier, and quintile. The proposed provision would describe the process dealers should use to calculate and normalize table values. A proposed conforming change to § 201.2 would add a definition for *complex,* meaning a group of local facilities under the common management of a live poultry dealer. The definition would explain further that a complex may include, but not be limited to, one or more hatcheries, feed mills, slaughtering facilities, or poultry processing facilities.

AMS is proposing to require live poultry dealers to provide recent average revenue information relating to growers at all the live poultry dealer's U.S. complexes to illuminate the range of payments to growers throughout the country. This information would allow growers to better assess housing specifications and related payment variability elsewhere in relation to what is offered at the local complex. AMS is proposing to require dealers to provide historical revenue information relating to growers in the same local complex because the information would give the current or prospective poultry grower considering a poultry growing arrangement a fairer picture of potential earnings under the arrangement and would help the grower evaluate whether those earnings would be sufficient to meet personal and business financial obligations. As described earlier, research shows poultry grower payments range widely above and below the mean received by contract growers. As well, payments range widely between specific contracts and grower pools. AMS believes providing quintiles for the previous five years, as proposed, organized by housing specification tier and normalized by square footage payments, would give growers information with which to better assess projected payments under the poultry growing arrangement. We believe that providing insights into the variability of cash flow within any given year would enable growers to make informed business decisions, manage risk, and improve farm management.

Proposed § 201.100(d)(3) would provide that if the housing specifications for poultry growers under contract with the live poultry dealer in the local complex may be modified so that an additional capital investment may be required, or if for some other reason annual gross payment averages for the previous five years do not accurately represent expected future grower payment averages, the live poultry dealer also would be required to provide the grower annual payment projections for the term of the poultry growing arrangement under consideration by housing specification and quintile, as under proposed § 201.100(d)(2). The dealer would also be required to explain why the historical data does not provide an accurate representation of future earnings. AMS is proposing this conditional requirement because there are situations in which historical data may not accurately reflect future projections. For example, changes in pay rates, pay systems, housing specifications, growout models, stocking densities, or number of annual placements are generally discretionary functions of the live poultry dealer. These decisions can directly impact grower payments. Live poultry dealers considering or undertaking actions related to the aforementioned functions would be obligated to provide grower payment projections to allow growers to determine the financial feasibility of the upgrades and make better informed business decisions. Standardized grower payment projections would include realistic expectations about future earnings. Nothing in the proposed provision would prohibit a live poultry dealer from providing grower payment projections even if they were not required to do so under § 201.100(d)(2).

Under proposed § 201.100(d)(4), the live poultry dealer would be required to provide a summary of any information the dealer collects or maintains pertaining to grower variable costs inherent to poultry production. A proposed conforming change to § 201.2 would add a definition for *grower variable costs* to mean those costs related to poultry production that may be borne by the poultry grower, including, but not limited to, utilities, fuel, water, labor, repairs and maintenance, and liability insurance. Based on discussions with integrators and other in the industry, AMS has found that many integrators collect this data to inform grower pay rates. Thus, AMS believes that live poultry dealers routinely collect and maintain this information, and that providing such information to poultry growers considering a poultry growing arrangement would help growers make informed decisions about their participation in the poultry production business.

Finally, under proposed § 201.100(d)(5), the live poultry dealer would be required to supply the contact information for the State university extension service office or the county farm advisor's office that can provide relevant information to the current or prospective poultry grower about grower costs and poultry farm financial management in the grower's geographic area. AMS believes that growers can benefit from the expertise and

[59] Most dealers do not own or operate growout facilities, but they do own everything else around which the growout facilities are organized—*i.e.,* the complex. The complex commonly includes the processing plant and feed mill, and may include other production facilities. Growers produce for a particular local complex, even though the dealer may own more than one local complex and other complexes around the country. Depending on the technical needs for optimizing poultry growth for each product type, the dealer may have multiple different housing specifications for growers who produce different products for the complex. So, the required table would show average payments to growers in each of the different housing specifications at the complex.

[60] The word ''local'' in this discussion is used to differentiate between the complex with which the grower may be considering a contract, and all the other complexes a dealer may own.

experience, as well as the information publicly available, from these sources, if they choose to access it.

Proposed § 201.100(e)—Small live poultry dealer financial disclosures—would exempt live poultry dealers who, in conjunction with any or all of the parent or subsidiary companies, slaughter fewer than 2 million live pounds of poultry weekly (104 million pounds annually) from the requirement to provide the Disclosure Document under proposed § 201.100(a)(1). Eighty-nine live poultry dealers file annual reports with AMS, and that number includes non-integrated processors and integrators who do not use the contract production model. According to AMS data, of that number, 47 live poultry dealers could be exempt under certain circumstances from the requirement to provide the Disclosure Document because they slaughter fewer than 2 million pounds of poultry weekly or 104 million pounds annually. The exemption would apply only if the new, renewed, or replacement contract offered by one of these dealers does not include revisions to existing housing specifications that would require the grower to make new or additional capital investments. AMS is proposing this exemption in order to ease the burden on smaller live poultry dealers. Often smaller operators have a smaller pool of growers, and many of those growers are using facilities that have been in production for many years, and are unlikely to be required to make changes. AMS believes the risk and impact of deception is reduced in this context and may not justify the effort and expense to develop the Disclosure Document required of larger business entities.

AMS is proposing to add new § 201.100(f)—Governance and certification, which would require the live poultry dealer to establish, maintain, and enforce a governance framework that is reasonably designed to review and ensure the accuracy and completeness of the Disclosure Document, and ensure the live poultry dealer's compliance with all its obligations under the Act and the regulations. We believe a governance framework and anti-fraud protections would help ensure sufficiently high-level corporate attention and legal accountability. Under proposed § 201.100(f), the framework must include audits and testing, as well as reviews of an appropriate sampling of Live Poultry Dealer Disclosure Documents by the principal executive officer or officers. The principal executive officer, or a person performing similar functions, of the live poultry dealer's company would be required to certify that the company complies with the governance framework requirement and that the Disclosure Document is accurate and complete. Current civil and criminal actions [61] related to price fixing in the poultry industry, including admissions of guilt,[62] suggest the potential for a conspiracy of deception among live poultry dealers. AMS believes that an audit and testing requirement, combined with officer reviews and certification are appropriately tailored to ensure the procedures used to produce the Disclosure Document and the information contained therein are sound and accurate.[63] The framework retains flexibility to enable integrators to design a framework appropriate to manage the risks relating to the preparation of compete and accuracy disclosures. As explained earlier, AMS is proposing to develop and provide a disclosure form with standardized language, which live poultry dealers can download and print. The proposed form would include a certification statement the dealer must sign.

Under proposed § 201.100(g)—Receipt by growers—a live poultry dealer would be required to include in the Disclosure Document a signature page. The signature page would be required to include this 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 (including any discrepancy with other oral or written statements made in connection with the poultry growing arrangement), 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.'' The live poultry dealer would further be required to obtain the current or prospective grower's dated signature on the signature page as evidence that the dealer provided the required documents according to specified timeframes. The dealer would be required to provide a copy of the dated signature page to the grower and would be required to retain a copy of the dated signature page in the dealer's records for three years following expiration, termination, or non-renewal of the poultry growing arrangement. AMS believes growers should be able to rely on the Disclosure Document for its intended purpose to further inform poultry growers of items related to their poultry growing arrangement. Growers should be aware that false or misleading statements and/or material omissions contained in the Disclosure Document may form a basis for legal action. AMS has an interest in ensuring poultry growers receive the Disclosure Document and accompanying documents in the appropriate timeframe, which would afford growers time to review all pertinent documents and information before they are required to sign binding contracts. Requiring live poultry dealers to collect and retain proof of compliance would ensure compliance with the proposed regulation.

In presenting this information to current and prospective growers, the disclosure document is expected to reduce information asymmetry and the risk of deception. AMS believes the proposed disclosure document would make growers better aware of risks related to the poultry growing arrangement and furnish growers with information that may currently be available only to dealers. The disclosure document would clarify for growers the high degree of control and influence the live poultry dealer exerts over critical production factors that affect the business success of growers' operations. Additionally, it would help prospective growers assess the degree to which their own skill and effort may or may not influence their pay.

AMS invites comments on various aspects of the proposal to require live poultry dealers to disclose specific information to prospective and current poultry growers in the Disclosure Document as described above. Please fully explain all views and alternative solutions or suggestions, supplying

[61] ''Four Executives and Company Charged with Price Fixing in Ongoing Investigation into Broiler Chicken Industry''. *Justice News,* U.S. Department of Justice Office of Public Affairs, July 29, 2021. Press Release. (referencing indictments against Koch Foods and former Pilgrim's Pride executives).

[62] Department of Justice Press Release No. 21–172. ''One of the Nation's Largest Chicken Producers Pleads Guilty to Price Fixing and is Sentenced to a $107 Million Criminal Fine''. February 23, 2021.

[63] Audits, testing, and executive review and certification of regulatory compliance requirements are found in several regulatory regimes involving important market compliance protocols. These include section 302 of the Sarbanes-Oxley Act (Pub. L. 107–204; 116 Stat. 745) and the Title XIII of the Bank Holding Company Act (12 U.S.C. 1851 *et seq.*) and regulations thereunder, commonly known as the Volcker Rule, including revisions designed to simplify the rule. See, ''Subpart D—Compliance Program Requirements'' (12 CFR 248.20, and discussion in 79 FR 556); ''Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in and Relationships With, Hedge Funds and Private Equity Funds'' (84 FR 61974).

examples and data or other information to support those views where possible. While comments on any aspect of the Disclosure Document are welcome, AMS specifically solicits comments on the following:

1. Would the amount and type of information required help poultry growers make informed business decisions and better understand the poultry growing arrangement, or otherwise better address deception risks that growers may face in the poultry contracting process and in the operation of a poultry growing arrangement?

2. What items might be added to or deleted from the proposed requirements to make the Disclosure Document most useful? Is any of the required information extraneous? Is any material information relevant to the poultry contracting process, including the terms in and risks of poultry growing arrangements, missing and should be added? Please explain what and why.

3. What specific challenges or burdens might dealers face in collecting and disseminating the information to be included in the Disclosure Document? Would this require dealers to modify their business model? What specific modifications would be required and why?

4. Do the proposed timelines for providing the Disclosure Document enable a grower to make an informed decision? Do these timelines create challenges for dealers or growers? If so, please explain why and suggest a more appropriate length of time.

5. Are there additional instances where a revision to the Disclosure Document would be appropriate? If so, please explain.

6. Is the wording of the proposed Disclosure Document and the disclosures that may be expected to arise under it readily understandable? If not, please suggest changes for improvement, including means to ensure that any disclosures in the Disclosure Document are readily understandable.

7. Are there circumstances in which the dealer should be required to provide the Disclosure Document in a language other than English? Are other business materials provided in other languages already? If so, please describe those circumstances and comment on the benefits and additional burden of such a requirement.

8. Are the proposed Disclosure Document statements regarding a poultry grower's right to read the Disclosure Document and to share the document and consult with certain other entities about the contents useful for growers? Or, for example, should growers be given additional notifications regarding where they can find out more about their legal rights under the Packers and Stockyards Act, such as a USDA summary of or a link to those rights? Or, would less information be appropriate? Why or why not?

9. Are there additional advisories to poultry growers that should be required in the Disclosure Document cover pages? If so, please explain why and suggest appropriate language for such notices.

10. Are there other risks inherent to poultry production about which growers should be informed prior to making major business decisions? If so, please explain and suggest appropriate language for such advisories.

11. Are the proposed disclosures regarding the financial health and integrity of the live poultry dealer adequate to enable growers to make sound business decisions? Why or why not?

12. Are there certain legal violations or other matters which could call into question the financial health or integrity of the live poultry dealer such that they should be disclosed?

13. Is the proposed disclosure regarding the dealer's policy on sale-of-farm circumstances adequate to ensure transparency and effective grower decision making?

14. Should we require dealers to disclose policies and procedures for determining whether disaster or sick flocks are caused by the integrator or grower and how growers will be compensated under each scenario? Or, where a dealer maintains policies that do not remove sick flocks from the tournament, should we require additional disclosures regarding sick flock risks to the grower? Why or why not?

15. Should we require dealers to disclose the contractual grounds for termination or suspension of the poultry growing arrangement? Why or why not?

16. Are there any other policies and procedures that dealers should be required to disclose? For example, should we require disclosure of policies and procedures around tournament groupings, compensation incentives of the dealers' representatives, or how growers may appeal or report determinations or actions?

17. Are the proposed disclosures relating to grower payment history and projections adequate to enable poultry growers to make sound business decisions, are the proposed metrics appropriate, and is the local complex the appropriate standard? What, if any, other information should be required, and why? If so, how should it be provided?

18. Is our estimation of the recordkeeping burden related to disclosing grower payment history appropriate? Why or why not?

19. Could certain types of financial disclosures facilitate harmful coordination by integrators? Why or why not? If so, how could the risk of harmful coordination be mitigated?

20. What effect, if any, would the required financial disclosures have on the lending system and on the provision of credit to growers?

21. Would the provision of information about grower variable costs benefit growers? Why or why not?

22. Have we listed the appropriate items regarding the grower variable costs dealers should enumerate and disclose to growers? For example, should we specify that dealers disclose information about costs related to compliance with environmental regulations, energy, water, and waste disposal? Are the timing of housing upgrades, including financing costs, reasonably predictable enough by dealers such that those costs should be considered part of grower variable costs during the poultry growing arrangement? Why or why not?

23. Is the estimated burden to dealers related to providing information about grower variable costs justified by the value to growers of having the information? Why or why not?

24. What types of information about grower variable costs do dealers currently collect? Are or how could dealers be incentivized to collect any information that they do not collect, or otherwise obtain such information in a reasonable manner?

25. How else can USDA refine and improve the disclosure regime outlined in this proposal? For example, would additional detail around the scope or definition of deception under the Packers & Stockyards Act be useful for implementing this disclosure regime—for example, a definition such as ''Deception shall mean a material representation, omission, or practice that is likely to mislead a reasonable livestock or poultry producer or grower''? Why or why not?

26. Is the proposed exemption from the Disclosure Document requirements for small businesses under certain circumstances appropriate? What risks or benefits are there in providing such exemptions? Are there other approaches—such as different thresholds—we should consider that could be appropriately tailored to small live poultry dealers?

27. Is the proposed governance structure appropriate and sufficient for ensuring the accuracy of information provided in the Disclosure Document? Why or why not?

28. Is the proposed governance structure appropriate for dealers? Please explain the burden and how it could be mitigated while providing sufficient accountability.

29. Are there other ways AMS could sufficiently ensure the completeness and accuracy of the Disclosure Document, and if so, should these replace or be added to any of the proposed provisions?

30. Should AMS specify the format (*e.g.,* electronic or machine-readable) in which disclosure records should be maintained? Why or why not?

31. Should AMS collect disclosure data, and if so, how might we use such data to enhance compliance and accuracy and monitor for possibly deceptive practices?

32. As proposed, the Disclosure Document requirement would apply to live poultry dealers in all segments of the poultry production industry. How appropriate are the proposed requirements for all types of poultry production? Should the requirement to provide the Disclosure Document be limited in application to broiler and turkey production, or is it appropriate to apply it to other types of poultry?

C. Contract Terms

Currently, § 201.100(c)—Contracts; contents—specifies certain information that must be included in a poultry growing arrangement. The live poultry dealer is required to specify the duration of the contract and conditions for termination of the contract by each of the parties, all terms relating to the poultry grower's payment, and information about a performance improvement plan for the grower, if one exists. As mentioned earlier in this document, AMS is proposing to redesignate current § 201.100(c) as § 201.100(i). Under this proposed rule, AMS would further revise new paragraph (i) by requiring the live poultry dealer to specify the minimum number of placements to be delivered to the poultry grower's farm annually in each year of the contract, and the minimum stocking density of each of those placements. As explained earlier, the minimum number of placements and the minimum stocking density of each placement under the poultry growing arrangement directly impact poultry grower revenues. Both figures are crucial to a current or prospective grower's ability to evaluate potential earnings under the contract and their ability to and meet financial obligations. AMS believes requiring live poultry dealers to include this information in poultry growing contracts would improve transparency and reduce the risk of deceptive inducement in the contracting process. As well, providing such information may allow lenders and insurers to better evaluate the desirability of poultry loans they are asked to consider.

AMS does not intend, in this rule, to restrict or influence the values provided under these mandatory provisions, but simply to require their transparent inclusion in production contracts. Knowing the minimum stocking density would allow the grower to predict baseline farm weight on a per flock basis. Using the baseline farm weight, the grower could calculate a baseline annual income based on the annual minimum number of flocks. We believe that requiring live poultry dealers to include these two terms in poultry growing arrangements would enable poultry growers to better estimate potential baseline returns from their operations and assess the expected value of the poultry growing arrangements overall, which could in turn foster improved debt management and cash flow. Having this information may also enable growers, as well as their lenders (private lending institutions and public entities that guarantee loans, including FSA), to better estimate and manage risks inherent in poultry production, including facilitating the acquisition of external insurance and risk management products.

Finally, AMS believes improving transparency in this regard would assist growers in better identifying and mitigating deception-related risks, including relationship frictions, conflicts of interest, and inappropriate conduct, including potential retaliation or discrimination. A grower's ability to estimate a contract's expected value and appropriately assess its financial feasibility is paramount to operational planning and risk management, including managing expectations and avoiding poor business decisions. Further, establishing a baseline against which to compare the integrator's performance under the contract would help growers identify deviations from contractual expectations. The rationale for such deviations might be contested. However, added transparency would reduce the risk that adverse actions by integrators against growers could be hidden and growers deceived about whether integrators are fulfilling their contractual obligations. Clearer contractual guarantees in particular would counter the ability for integrators to strategically reduce supply by limiting placements or cutting stocking densities and negatively impacting the earnings of growers without the growers being able to measure, in a reliable and effective manner, the harm they have in fact suffered. Transparency also would discourage the integrator from engaging in discriminatory or retaliatory conduct against growers because the adverse actions would no longer be hidden. Fortunately, as noted above, a more transparent baseline may provide a common floor against which both integrator and grower can work together to manage and mitigate meaningful market risks.

The remainder of redesignated § 201.100(i) would remain unchanged. As well, the text of redesignated paragraphs (j), (k), (l), and (m) of § 201.100 (currently § 201.100(d), (e), (g), and (h), respectively), would remain otherwise unchanged under this proposed rule.

AMS solicits comments on the proposal to require a live poultry dealer to specify in a poultry growing arrangement the minimum number of flocks to be placed with the grower each year under the contract and to specify the minimum stocking density of each flock. Please fully explain all views and alternative solutions or suggestions, supplying examples and data or other information to support those views where possible. While comments on any aspect of the revisions to contract terms are welcome, AMS specifically solicits comments on the following:

1. Do the proposed requirements to specify an annual minimum number of flocks and a minimum stocking density for each flock under the poultry growing arrangement adequately address the need for transparency to avoid deception in poultry growing arrangements? Why or why not?

2. Are there alternative solutions we should consider? For example, in relation to the guaranteed minimum number of flocks per year, would it be more useful to growers and simpler for integrators to express that value as a guaranteed number, or range, of days between flocks? Why or why not?

D. Poultry Grower Ranking Systems

To address concerns identified in the section on *Poultry Grower Ranking Systems* earlier in this document, AMS proposes to add a new § 201.214—Transparency in poultry grower ranking pay systems. The new section would specify the recordkeeping and disclosure requirements for live poultry dealers when they group or rank poultry growers delivering poultry to the dealer during a specified period for the

purpose of determining payment to poultry growers. Conforming changes would be made to § 201.2 to add definitions for terms used in new § 201.214.

Currently, live poultry dealers are required under the regulations at 9 CFR 201.100(d) to furnish poultry growers in poultry grower ranking systems with settlement sheets that show the grower's precise position in the ranking for that tournament. As explained earlier, under this proposed rule, that paragraph would be redesignated § 201.100(j), retaining the requirement to provide settlement sheets. AMS proposes to add a requirement in new § 201.214(a)—Poultry grower ranking system records—that would require a live poultry dealer who calculates payment under a poultry grower ranking system to produce and maintain records showing how certain inputs were distributed among participants. Further, the dealer would be required to maintain those records for five years. Maintaining records allows USDA or any other party with the proper legal authority to collect them for review in the course of an investigation or legal action. The term *poultry grower ranking system,* meaning a system where the contract between the live poultry dealer and the poultry grower provides for payment to the poultry grower based upon a grouping, ranking, or comparison of poultry growers delivering poultry during a specified period, would be added to § 201.2. The term *inputs,* would also be added to § 201.2 and would be defined as the various contributions to be made by the live poultry dealer and the poultry grower as agreed upon by both under a poultry growing arrangement. The proposed definition would further provide that such inputs may include, but are not limited to, animals, feed, veterinary services, medicines, labor, utilities, and fuel.

Proposed § 201.214(b) would require a live poultry dealer to provide certain information about the flock placed with the poultry grower within 24 hours of the placement on the grower's farm. Specifically, the dealer would be required to provide the flock's stocking density, expressed as the number of poultry per facility square foot; the ratios of breeds of the flock delivered; the ratios of male and female birds in the flock, if the sex of the poultry had been determined; the breeder facility identifier; the breeder flock age; information regarding any known health impairments of the breeder flock and of the poultry delivered to the poultry grower; and what, if any adjustments will be made to grower pay to reflect any of these inputs. As explained earlier in this document, each of these inputs may influence farm weight and feed conversion. In some cases, a poultry grower may adjust management practices in response to potential impacts of inputs on flock performance. This requirement is intended to equip the poultry grower with basic, accurate information at the outset of each growout period about the placement that may inform the grower's management decisions during growout. Growers armed with this information may be better able to efficiently allocate resources during flock growout and maximize their individual profitability.

As conforming changes, AMS proposes to add the following terms and their definitions to § 201.2. *Breeder facility identifier* would be defined to mean the identification a live poultry dealer assigns to distinguish among breeder facilities supplying eggs for the poultry placed in poultry growout operations. These identifiers should be permanent, remaining the same from one growout period to the next, so that growers can observe patterns, if any, related to the performance of flocks originating with different breeders. Live poultry dealers may assign alpha or numeric or some other identifier to each farm to keep the identity of individual breeder facilities private. *Breeder flock age* would be defined to mean the age of the egg-laying flock that is the source of poultry placed on the poultry grower's farm. Depending on the type and breed of poultry being raised, the age of the breeder flock producing the eggs from which poultry for growout are produced may influence the grower's production decisions.

Under proposed § 201.214(c)—Settlement documents—a live poultry dealer employing a poultry grower ranking system to calculate settlement payments for poultry growers would be required to provide every grower within the tournament ranking system settlement documents that show certain information about each grower's ranking within the system, as well as the inputs each poultry grower received, for each growout period. Proposed § 201.214(c)(1) would reflect language in current § 201.100(f) that requires the live poultry dealer to provide each poultry grower a copy of a grouping or ranking sheet that shows the grower's precise position in the grouping or ranking for that growout period. Additionally, the live poultry dealer would be required to show the housing specifications and the actual figures upon which the grouping or ranking is based for each grower grouped or ranked in the system during the specified growout period.

Under proposed § 201.214(c)(2), live poultry dealers would be required to make visible to all grower participants in the poultry grower ranking system the distribution of dealer-controlled inputs provided to all participants. Specifically, live poultry dealer would be required to disclose the stocking density at each grower's placement, expressed as the number of poultry per facility square foot. The dealer would be required to disclose the ratios of the breeds of poultry and the ratios of male and female poultry, if poultry are sexed, placed at each poultry grower's farm. The live poultry dealer would be required to indicate with the use of breeder facility identifiers the source of poultry placed at each poultry grower's facility. The dealer would be required to disclose the age of the egg laying breeder flock from which each poultry grower's placement is produced. The dealer would also be required to report the number of feed disruptions of 12 hours or more each grower experienced during the growout period. Finally, the live poultry dealer would be required to identify any growers' flocks that received any other inputs (such as medication) delivered or administered to the poultry on the participating growers' facilities during the growout period.

As mentioned above, live poultry dealers are currently required to provide settlement sheets showing each grower's ranking within the poultry grower ranking system and to show the actual figures used to rank poultry growers for settlement purposes. However, poultry growers have complained to USDA that the limited information they get does not allow them to effectively evaluate their performance compared to others because they don't know how the inputs they receive compare to the inputs other growers receive. Nor do they know how their performance relates to housing specifications. Further, some growers believe other growers within the same poultry grower ranking system receive superior inputs to their own.

AMS believes the settlement information provided under proposed § 201.214 would enable growers to make factual comparisons about their performance relative to other growers' performance within the poultry grower ranking system. As well, growers may begin to recognize patterns. For instance, a poultry grower might observe that those growers who experienced one or more lengthy feed disruptions ranked lower than growers without feed disruptions. Based on that observation, the grower might determine

to place feed orders with the live poultry dealer earlier than they have in the past to ensure future flocks have consistent feed supplies. Or perhaps growers may identify patterns in performance in relation to housing specifications, and make evaluations regarding the relative impact of skills and effort versus housing design and adjust their business strategies accordingly. Such evaluations and patterns would reduce deception risks such as those associated with misplaced efforts by growers or over- or underinvestment by growers in attempts to operate successfully within the tournament system as designed and managed by the integrator.

The disclosures in proposed § 201.214 could potentially affect the poultry grower's business decisions in various ways. For instance, poultry growers currently may have limited access to information about the poultry breeds, breeder stock age, stocking density, type and administration of veterinary medicines, and transportation or other integrator inputs provided to themselves and other growers in their tournament group. With disclosures under the proposed rule, growers may be able to adjust management practices to optimize growout performance if they know the poultry's breed or have information about the age and health of the breeder flock for their own placements. Additionally, if they have information about feed disruptions, different stocking densities, veterinary treatments, and other different inputs among all growers in the settlement group, poultry growers in tournament systems may be better able to recognize performance patterns and reallocate their resources to optimize their own growout performance. Poultry growers would still receive settlement sheets as currently provided under § 201.100(d), which helps growers verify accuracy of payments, but they would have the added advantage of being able to measure and manage risks and detect possible retaliation or discrimination.

AMS invites comments on the proposed addition of new § 201.214 to the regulations and on the proposed requirements to provide poultry growers in tournament systems with information about inputs both at the time of placement and at settlement. Please fully explain all views and alternative solutions or suggestions, supplying examples and data or other information to support those views where possible. While comments on any aspect of the proposed new section are welcome, AMS specifically solicits comments on the following:

1. Is the proposed period for maintaining records relating to the distribution of inputs to tournament participants appropriate?

2. How long such records should be maintained and why?

3. What burdens does this recordkeeping create for dealers?

4. How well does the proposed requirement to supply input information about each placement to growers at the time of placement respond to grower requests for such information?

5. Is the type or amount of information required appropriate, or should certain items be added to or deleted from the list, or otherwise modified? More particularly, should information about the contents and origin (or mix) of the feed supplied or the provision of veterinary services be disclosed to all tournament participants or not? Why or why not?

6. Is the required information useful to a grower's operations or not, including in managing risks and otherwise in preventing deception? Why or why not?

7. What benefits or costs may be associated with this requirement, and would those benefits or costs be justified?

8. What specific burdens or challenges might dealers encounter in collecting information for placement disclosures?

9. Would the requirement to provide placement disclosures affect dealers' business practices? If so, how?

10. How well does the requirement to provide input distribution information, along with settlement payment information, for all members of the tournament respond to grower requests to improve transparency, address information asymmetry, and reduce the chance of deception in the tournament payment system?

11. Does the requirement to disclose the housing specifications along with settlement payment information improve transparency, address information asymmetry, and reduce the chance of deception in the tournament payment system? Why or why not?

12. Would the proposed settlement information help growers evaluate and improve, if necessary, their performance, make informed business decisions, or mitigate risks? Why or why not?

13. Is there other information or another way of presenting the information that would be better?

14. Do growers face any obstacles to sharing or discussing placement or settlement information with others that should be addressed; if so, what are those obstacles and how should they be addressed? Should rights to discuss the terms of poultry growing arrangement offer apply to all the disclosures proposed by this rule? Why or why not?

15. What specific burdens or challenges would dealers encounter in implementing the settlement disclosure, and what strategies might help mitigate those burdens or challenges?

16. How would the proposed changes to settlement disclosures affect dealers' business practices?

17. Under existing regulation 201.100(f), live poultry dealers are not required to disclose the names of other growers on ranking sheets. Under 201.214 of this proposal live poultry dealers would disclose a breeder farm identifier in the settlement disclosures but would not be required to disclose the name of breeder farms. Should we reevaluate our position on this issue? Why or why not?

18. Currently, dealers are not required to disclose the names of all competing growers on ranking sheets. Should we require dealers to disclose the names of all competing growers in settlement documents? Why or why not?

19. Are there other ways of expressing grower identity information that would be useful to growers and balance privacy and confidentially concerns?

20. We propose to require dealers to disclose the number of feed disruptions each poultry grower endured during the growout period, where the grower was completely out of feed for 12 hours or more. Is this an appropriate length of disruption to trigger reporting? Should we require a shorter time, such as 6 hours? Please explain your views.

VI. Regulatory Analyses

A. Executive Order 12988—Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988—Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule would not preempt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. Nothing in this proposed rule is intended to interfere with a person's right to enforce liability against any person subject to the Act under authority granted in section 308 of the Act.

B. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175—Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule may impact individual members of Indian tribes that operate as live poultry dealers or poultry growers; however, it would not have a direct effect on tribes or the relationship or distribution of power and responsibilities between the Federal Government and Indian tribes. Therefore, consultation under Executive Order 13175 is not required at this time. If a Tribe requests consultation, AMS will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress. AMS will also extend outreach to ensure tribe members are aware of the requirements and benefits under this proposed rule once final.

C. Civil Rights Impact Analysis

AMS has considered the potential civil rights implications of this proposed rule on members of protected groups to ensure that no person or group would be adversely or disproportionately at risk or discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, or protected genetic information. This rule does not contain any requirements related to eligibility, benefits, or services that would have the purpose or effect of excluding, limiting, or otherwise disadvantaging any individual, group, or class of persons on one or more prohibited bases. In fact, the proposed regulation would create means by which AMS may be able to address potential civil rights issues in violation of the Act.

In its review, AMS conducted a disparate impact analysis, using the required calculations, which resulted in a finding that Asian Americans, Pacific Islanders, and Native Hawaiians were disproportionately impacted. The proposed regulations would provide benefits to all poultry growers. AMS will institute enhance efforts to notify the groups found to be more significantly impacted of the regulations and their implications. AMS outreach will specifically target several organizations that regularly engage with or otherwise may represent the interests of these impacted groups.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS has requested OMB approval of new information collection and recordkeeping requirements related to this proposed rule. AMS invites comments on this new information collection. All comments received on this information collection will be summarized and included in the final request for OMB approval. Below is summary information on the burdens of these new information collection and recordkeeping requirements. Additional detail can be found in the Regulatory Impact Analysis (RIA). Comments on this section or the details in the RIA will be considered in the final rule analysis.

Title: Transparency in Poultry Grower Contracting and Tournaments.

OMB Number: 0581–NEW.

Expiration Date of Approval: This is a NEW collection.

Type of Request: Approval of a New Information Collection.

Abstract: The information collection requirements in this request are essential to improve transparency and forestall deception in the use of poultry 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 to provide certain disclosures to poultry growers in advance of entering into production contracts. Under the proposal, dealers would have the option of using the Live Poultry Dealer Disclosure Form provided by AMS to meet the requirements for the cover page that must accompany additional dealer-generated disclosure documents as required. Alternatively, dealers could develop their own cover page to meet the requirement, as long as all the required information is included. Poultry growers could use the disclosure information to evaluate the accuracy of proposed contracts and make informed business decisions regarding financial investments related to poultry production.

The proposed rule would also require live poultry dealers who group and rank poultry growers for settlement purposes to disclose essential information to poultry growers about the flocks placed with individual growers at the time of placement. Dealers would also be required to disclose information about the flocks and associated production inputs delivered to all growers in the settlement group, as well as each grower's ranking within the group, at the time of settlement. The estimates provided below apply only to live poultry dealers who would be required to provide the information to growers. Poultry growers would not be required to provide information, but would be able to use the information provided by live poultry dealers to improve flock management practices and evaluate grower treatment under poultry grower ranking systems.

Live Poultry Dealer Disclosure Document

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.87 hours per response (first year), 0.26 hours thereafter.

Respondents: Live poultry dealers.

Estimated Number of Respondents: 89.

Estimated Number of Responses: 23,047.

Estimated Number of Responses per Respondent: 259.

Estimated Total Annual Burden on Respondents: 19,993 hours first year, 6,066 thereafter.

Poultry Grower Ranking System Records

Estimate of Burden: Public reporting burden for the collection of information is estimated to average 0.29 hours per response (first year), 0.10 hours thereafter.

Respondents: Live poultry dealers.

Estimated Number of Respondents: 89.

Estimated Number of Responses: 32,011.

Estimated Number of Responses per Respondent: 360.

Estimated Total Annual Burden on Respondents: 9,253 hours first year, 3,201 thereafter.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who

are to respond; including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

AMS estimates each of 89 live poultry dealers would develop an average of 259 Live Poultry Dealer Disclosure Documents for poultry growers relating to new, renewed, revised, or updated poultry growing arrangements, as required under proposed § 201.100. AMS arrived at its estimate of 259 developed Disclosure Documents per live poultry dealer from AMS records which show 89 live poultry dealers filed annual reports with AMS, and their reports indicate that they had 23,047 growing contracts with poultry growers during their fiscal year 2020. AMS divided the 23,047 growing contracts by the 89 live poultry dealers to arrive at 259 Disclosure Documents per live poultry dealer. Dealers with current contracts with poultry growers would not be required to provide the Disclosure Document to those growers unless the dealer is proposing modifications to the poultry housing specifications under the contract. AMS estimates first year development, production, and distribution of the Disclosure Documents, including management, legal, administrative, and information technology time, would require an average 0.87 hours each, while ongoing annual production and distribution of each Disclosure Document would take 0.26 hours. AMS arrived at the estimates of the number of hours on an annual basis to set up, produce, distribute, and maintain each Disclosure Document by dividing the annual number of responses for all live poultry dealers (23,047) by the number of hours to set up, produce, and distribute the disclosures (19,993 first year hours and 6,066 ongoing hours). AMS estimated the number of hours for all live poultry dealers to develop, produce, distribute, and maintain each Disclosure Document from the number of hours estimated and the expected cost estimates in Tables 1 and 2 in Appendix 1.

AMS estimates 89 live poultry dealers would each provide placement and settlement records to an average of 360 poultry growers under tournament ranking systems, as required under proposed § 201.214. AMS estimated the annual number of placement and settlement records by multiplying the number of slaughter plants in AMS records from the reports that live poultry dealers file with AMS (228) by the average number of tournaments at each plant per week from AMS subject matter experts (1.35) by 52 weeks. This product is then multiplied by two to account for both placement and settlement records. AMS then divided the estimated annual number of responses (32,011) by the number of live poultry dealers (89) to arrive at its estimate of 360 placement and settlement disclosure records for each live poultry dealer on an annual basis.

AMS estimates first year development, production, and distribution of the required placement and settlement records, as required under proposed § 201.214, including management, legal, administrative, and information technology time, would require approximately 0.29 hours. AMS estimates ongoing annual production and distribution of required tournament placement and settlement information would require an average of 0.10 hours. AMS arrived at the estimates of the number of hours to set up, produce, and distribute, and maintain each Disclosure Document on an annual basis by dividing the annual number of responses for all live poultry dealers (32,011) by the annual number of hours to set up, produce, distribute, and maintain the placement and settlement disclosures (19,993 first year hours and 6,066 ongoing hours). AMS estimated the number of hours for all live poultry dealers to develop, produce, and distribute each placement and settlement Disclosure Document from the number of hours estimated and the expected cost estimates in Tables 1 and 2 in Appendix 1.

Under proposed § 201.100(f), live poultry dealers would be required to certify as to the accuracy of the Disclosure Document and would be required to maintain records relating to the Disclosure Document for three years following expiration of the poultry growing arrangement. Under proposed § 201.214, live poultry dealers would be required to maintain records related to poultry grower tournament placements and settlement for five years.

The required disclosures under proposed 201.100 would include essential information about the contract, the live poultry dealer's business history, and financial projections the grower could use to evaluate entering into the contract. Under the proposal, live poultry dealers would be required to provide the Live Poultry Dealer Disclosure Document, which includes specified information and boilerplate grower notifications. AMS would make available a form—the Live Poultry Dealer Disclosure Form—dealers could download from the AMS website as the cover pages for Disclosure Document, or they could create their own cover pages, as long as all the required information is included. Live poultry dealers would be required to obtain grower signatures as evidence of compliance with the disclosure requirements, and would be required to retain the signature page for three years following contract expiration.

Proposed § 201.214 would also require live poultry dealers who group or rank poultry growers for settlement purposes to disclose information about each flock of poultry placed with growers for growout at the time of placement. Additionally, dealers would be required to provide to each poultry grower in the group, at the time of settlement, information about the flocks placed with every grower in the group, as well as each grower's performance ranking within the group. Growers could use placement disclosures to inform flock management decisions during growout, and could use settlement disclosures to evaluate their growout performance, potentially improve future performance, and evaluate whether group members are treated fairly. Live poultry dealers would be required to maintain records related to these disclosures for five years following settlement.

Costs of Proposed §§ 201.100 and 201.214

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, distribute, and maintain these documents are 29,246 in the first year, and 9,267 in subsequent years. Complete details showing how AMS arrived at these cost estimates appear in Tables 1 and 2 in Appendix 1.

E. E-Government Act

USDA is committed to complying with the E-Government Act by promoting 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.

F. Executive Orders 12866 and 13563

AMS is issuing this proposed rule in conformance with Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review, which 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, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

In the development of this proposed rule, AMS considered several alternatives, which are described in the Regulatory Impact Analysis, below.

The proposed rule is not expected to provide, and AMS did not estimate, any environmental, public health, or safety benefits or impacts associated with the proposed rule. We request comment on potential environmental, public health, or safety impacts of the proposed rule as well as data sources and approaches to measure their economic implications.

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore has been reviewed by OMB. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

AMS is proposing to amend 9 CFR part 201 by adding new definitions to § 201.2, adding contract and disclosure requirements for live poultry dealers in § 201.100, and adding new § 201.214 regarding live poultry dealer responsibilities when they use poultry grower ranking systems to settle payments for poultry growers. Based on its familiarity with the industry, AMS's Packers and Stockyards Division (PSD) prepared an economic analysis of the proposed rule as part of the regulatory process. The economic analysis includes a cost-benefit analysis of the proposed rule. PSD then discusses the impact on small businesses.

G. Regulatory Impact Analysis

As a required part of the regulatory process, AMS prepared an economic analysis of the costs and benefits of the proposed §§ 201.100 and 201.214.

The poultry industry is highly vertically integrated. That is, a single entity owns or controls nearly all the steps of poultry production and distribution. Poultry production contracts reduce the costs for integrators of negotiation with individual growers over the purchase of individual flocks of poultry and relieve integrators from the burden and risks of owning and maintaining poultry houses. The growout portion of production is largely accomplished through contract growers, who bear these burdens and risks. Most poultry, and particularly broilers, are grown under production contracts.

The Agricultural Census reported that 96.3 percent of broilers and 69.5 percent of turkeys were raised and delivered under production contracts in 2017. Live poultry dealers place chicks in barns owned by contract growers. Typically, live poultry dealers provide young poultry, feed, medication, and harvest and transportation services to these poultry growers, who house, feed, and tend the growing birds.

In order to grow poultry on a commercial scale, a poultry grower must invest in housing. The investment is substantial. As discussed above, it may take $350,000 to $400,000 or more to build one grow house, and most farms have multiple houses. The total investment required can easily exceed $1 million. Also, the housing is built and equipped specifically for the purpose of growing poultry. The costs of adapting the housing for any other purpose can be prohibitive.[64] Because the integrators control most aspects of a grower's production, growers are dependent upon the actions of the integrators to recoup the grower's substantial and specific investment. This puts growers in a particularly precarious position where market concentration has led to there being only a small number of integrators with whom to do business—as is the case in almost all geographic markets.

The vertical integration of the industry leads to many risks borne by contract poultry growers. Some of these risks are discussed above. Notably, because of the large investment required of poultry growers, the financial risk of protecting that investment is substantial. Because integrators maintain such heavy influence over many aspects of growers' production, growers have significant exposure to liquidity risks, should flock placements and revenues fall.

Thus, contract poultry growers are subject to numerous risks associated with integrator control over specific aspects of their operations, such as the frequency and density of flock placements, and the related risks of not having control over the genetic quality or health of the chicks that are placed. Integrators control the scheduling of feed deliveries, which also can impact feed conversion and thus grower pay. Also, production variables such as target weights of birds and the growout periods of birds are determined by the integrator, further adding to the risks borne by contract poultry growers. Because integrators control most aspects of grower performance and compensation, that control could be used as a means of retaliation or discrimination. If, for example, a grower has made complaints against the integrator, the integrator may provide fewer or poorer quality inputs, resulting in lower pay.

Integrators benefit from poultry growing contracts by having control over the quality and supply of inputs (birds) into the processing plant while remaining free from many of the risks related to capital investments in growing capacity, where those costs and associated risks are borne by the growers. On the other hand, contracts shift other risks from the grower to the integrator. With integrators responsible for chick genetics, feed quality, and other inputs (with the possible exception of fuel), changes in input prices do not directly affect growers. Growers also do not bear the risks (or enjoy the benefits) of price changes in the value of live poultry or poultry meat, as they do not own the poultry or poultry meat and thus do not sell it. Research on poultry growing contracts in the broiler market has shown them to shift that variation in input costs and output prices, which comprises up to 84 percent of the variation in returns to broiler production.[65] [66]

The most common form of a poultry growing contract is a ''relative performance'' contract, also known as a ''tournament'' contract in the industry. Under tournament contracts, the integrator assigns each grower to a settlement pool, which consists of all the growers given flocks that the integrator processed in a given week. The integrator provides the grower with the production inputs of an initial supply of chicks and feed and veterinary support throughout the growing period; The grower provides the inputs of housing, water, electricity, labor and management. At the time of processing, the integrator collects the finished birds and calculates an average performance metric for the settlement pool, typically the feed-conversion ratio or similar metric. The grower's compensation under the tournament contract, is the sum of a base payment, which typically depends on the total liveweight of the finished birds (less feed and chick costs), and a payment or deduction based on the average

[64] For a discussion of the difficulty in adapting of broiler grow houses for other purposes, see Vukina and Leegomonchai 2006, Op. Cit.

[65] Knoeber, C.R. and W.N. Thurman. 1995. ''Don't Count Your Chicken. . . : Risk and Risk Shifting in the Broiler Industry.'' *American Journal of Agricultural Economics* 77, 486–496.

[66] This research is regularly cited and reaffirmed in the current economics literature including Tsoulouhas and Vukina (2001) and McDonald (2014) that we cite elsewhere.

performance metric for the settlement pool. For most tournaments, the payment or deduction formula is the difference between the grower's performance metric and the settlement's average, subject to a scaling multiplier. Production periods for poultry are sufficiently short that a grower will typically be in several tournaments in a year. Tournament contracts can have advantages and disadvantages for both integrators and poultry growers.

Agricultural production is an inherently risky endeavor, and returns have some level of risk no matter the marketing channel or structural arrangement. However, researchers have noted that in addition to mitigating the risks of input cost and output price variation, the tournament system also helps insulate poultry growers from some aspects of what are known as common production risks. These are systematic risks common to all growers in a tournament such as weather or widespread disease, feed quality, or genetic strains. This academic research finds that since those risks are likely to affect all growers in a region, compensation is less likely to be adversely affected under a tournament contract than it would be on a simple price per unit of weight contract.[67] For example, if an unusual heat wave caused all growers in a tournament to experience poorer feed conversion, all tournament growers may require more feed and a longer grow period for their flocks to reach the target weight. They would receive the same pay for the weight produced, while not being penalized for the higher feed costs incurred to produce that weight.

As noted, no contract type will protect growers from all market risks, and tournament contracts still leave growers exposed to some common risks. For example, when plants had to reduce processing capacity due to the Covid pandemic, growers experienced reduced compensation to the extent that they received fewer or less dense placements from the integrators.

Tournament systems do not insulate growers from the other risks of contracts discussed above such as the financial risk, liquidity risk, the risk from incomplete contracts, and the lack of control over inputs and production variables. And tournaments introduce new categories of risks to growers: Group composition risk and added risks of settlement-related deception or fraud. The risks of deception or fraud as discussed above include the inability of growers to verify the accuracy of payments, and to detect discrimination or retaliation.

Group composition risk is the risk associated with the composition and performance of other growers in their settlement groups. A particular grower's pay is impacted by the performance of others in the tournament. Growers have no control over the other tournament members' effort and performance, nor over with which other growers they are grouped. An individual grower's effort and performance can be static, and yet that grower's payments could fluctuate based on the grower's relative position in the settlement group. Further, changes in payment may not be commensurate with the changes in grower's effort and performance. These characteristics of the tournament system can add to the variability of pay and affect the ability of growers to plan and measure their own effort and performance. On the other hand, the system is designed to incentivize participants to do their best in the hopes of gaining higher rewards.

The integrators also determine which growers are in each settlement group. While growers in a group must have similar flock finishing times, a live poultry dealer could move a grower into a different grouping by altering layout times to change the week that a grower's broilers are processed. An individual grower may perform consistently in an average performing pool, but if the integrator places that grower in a pool with more outstanding growers, those outstanding growers raise the group average and reduce the fees paid to the individual. At its discretion or per the poultry growing arrangement, an integrator may remove certain growers it considers to be outliers from a settlement pool. This would likely affect the average performance standard for the settlement and affect the remaining growers' pay. Group composition risk can be more relevant to some growers when a tournament's settlement group contains growers with different quality or ages of grow houses.

In addition, the current documentation of tournament terms provides little to no information on the expected variation between individual payments over time. Providing the settlement formula alone does not give growers a means by which they can predict total income over a meaningful period. More generally, an individual grower cannot estimate the variance in pay across periods with the same accuracy as the integrator with whom he or she contracts. Information that would be provided pursuant to this rule would address this issue. Also, growers do not currently receive information that allows them to understand the impact of many integrator decisions made during the growout period that may affect grower incomes. For example, integrators may switch the genetics of chicks supplied to growers or change a feed ration or supplier. Increased information required in settlement disclosure regarding inputs and other factors will make it easier for growers to assess the impacts of these decisions and improve their ability to protect themselves against any systematic issues related to those decisions.

Integrators benefit from tournaments systems, because they provide integrators more control and certainty of the total pay to all the growers in a settlement group. They also benefit from a system that disincentivizes shirking with respect to production efficiency. However, the incentive to avoid shirking can be imparted in a fixed performance standard contract as well.

There is asymmetry in the information available to live poultry dealers and the growers with whom they contract. Some of the information held by live poultry dealers would be valuable to growers because it influences grower compensation in tournament contracts and might help growers in negotiating contract terms and making decisions about capital investments and flock management.

The contracts themselves are often incomplete and exhibit asymmetry in the information available to live poultry dealers and contract growers. Because live poultry dealers supply most of the inputs, much of the production information is available only to the grower from the live poultry dealer. For example, the contract grower may not know precisely how much feed it used, or how much weight the flock gained under his or her care, unless the live poultry dealer provides the information.

Growers may lack negotiating leverage with integrators to demand transparency and completeness in contracts. Most growers have few live poultry dealers in their area with whom they can potentially contract. The table below shows the number of integrators that broiler growers have in their local areas by percent of total farms (number of growers), total birds produced (number of birds), and by total production (pounds of birds produced).

[67] See, for example, Tsoulouhas, Theofanis and Tomislav Vukina. ''Regulating Broiler Contracts: Tournaments Versus Fixed Performance Standards''. *American Journal of Agricultural Economics* 83 (2001): 1062–1073.

TABLE 1—INTEGRATOR CHOICE FOR BROILER GROWERS [68]

Integrators in grower's area[69]	Farms (percent of total)	Birds (percent of total)	Production (percent of total)	Can change to another integrator (percent of farms)
Number				
1	21.7	23.4	24.5	7
2	30.2	31.9	31.7	52
3	20.4	20.4	19.7	62
4	16.1	14.9	14.8	71
>4	7.8	6.7	6.6	77
No Response	3.8	2.7	2.7	Na

The data in the table show that 52 percent of broiler growers (Farms), accounting for 56 percent of total production and 55 percent of birds produced, report having only one or two integrators in their local areas. This limited integrator competition may accentuate the contract risks. Even where multiple growers are present, there are high costs to switching, owing to the differences in technical specifications that integrators require. To switch, the growers likely would need to invest in new equipment and learn to apply different operational techniques due to different breeds, target weights and growout cycles.

Live poultry dealers hold information on how individual poultry growers perform under a variety of contracts. The average number of contracts for the live poultry dealers filing annual reports [70] with AMS in 2020 was 251. The largest live poultry dealers contracted with several thousand growers. Because live poultry dealers provide most of the inputs to all the growers in each tournament, the live poultry dealers have information about the quality of the inputs, while each grower can know only what he or she can observe. Due to a lack of scales and tools to evaluate feed quality, a grower may not be able to weigh, measure or evaluate the inputs it received such as chicks and feed, and it almost certainly will not know about the inputs received by other growers. Live poultry dealers also have historical information concerning growers' production and income under many different circumstances for all the growers with which it contracts, while an individual grower, like most other producers, has information concerning only its own production and income.

New growers entering the industry may have little or no experience from which to draw information for forming expectations for future input and maintenance costs or for evaluating the value of initial capital expenditures. Experienced growers entering into new contracts are limited to their own past experience to draw upon. Live poultry dealers have information from all its contractors about performance, costs, and expenditures.

There are concerns that compensation based on relative performance when growers are not in control of many of the inputs of production creates opportunities for manipulation by integrators. It is also difficult, especially for new growers, to understand how compensation is likely to vary over time as a result of tournaments and other terms that may not currently be present in all contracts such as placement frequency and flock density. This problem of incomplete contracts, the core concepts of which were discussed in the preamble, is of particular concern due to the cost and lifespan of the capital required to be a poultry grower.

With incomplete contracts, at least one party will have discretionary latitude to deviate from expectations.[71] For example, poultry production contracts often do not guarantee the number of flocks a grower will receive even with long-term contracts, even though this is critical information for understanding the value of the contract to the grower.[72] The type and frequency of required upgrades to existing equipment and housing are often left to the discretion of the live poultry dealer.

Hold-up, discussed in the preamble, is a problem that occurs in poultry production contracts because the poultry grower's outlay of the significant capital requirements of growing chickens results in specialized equipment and facilities (that is, they have little value outside of growing chickens). As a result, growers entering the market are tied to growing chickens to pay off the financing of the capital investment. Growers might fear that they will be forced to accept unfavorable contract terms because they are tied to production to pay off lenders and have few, if any, alternative integrators with whom they can contract. This fear can lead to underinvestment in the capital necessary to grow broilers.

This fear is amplified by a historical lack of transparency and incomplete contracts in poultry contracting. It is particularly difficult for a grower making investment or contract decisions to develop a clear estimate of their expected returns because there are a number of important variables that are either not in the contract or difficult or impossible for a grower not already working with a particular integrator to evaluate. Besides not knowing the number of flocks and required capital upgrades as discussed above, it may also be difficult or impossible for a potential grower to determine how much their compensation is likely to vary based on the outcome of adjustments to compensation pursuant to the outcome of a tournament system and to capital improvements of peer growers. Making information that allows growers considering capital investments more readily available and easier to understand at the time important business decisions are made could help reduce the risks and level of concern related to hold-up and lead to better business decisions.

The current market structure and practices lead to a range of harms and risks to growers and to market

[68] MacDonald. (June 2014) Op. Cit.

[69] MacDonald. (June 2014) Op. Cit. (Percentages were determined from the USDA Agricultural Resource Management Survey (ARMS), 2011. ''Respondents were asked the number of integrators in their area, which was subjectively defined by each grower. They were also asked if they could change to another integrator if they stopped raising broilers for their current integrator.'' The 7 percent of those facing a single integrator assert that they could change, presumably through longer distance transportation to an integrator outside the area. Ibid. p. 29 and 30.)

[70] All live poultry dealers are required to annually file PSD form 3002 ''Annual Report of Live Poultry Dealers,'' OMB control number 0581–0308. The annual report form is available to public on the internet at *https://www.ams.usda.gov/sites/default/files/media/PSP3002.pdf.*

[71] Steven Y. Wu and James MacDonald, ''Economics of Agricultural Contract Grower Protection Legislation,'' *Choices,* Third Quarter, 2015, pp 1–6.

[72] MacDonald (June 2014) Op. Cit.

efficiency. Data and information available to AMS regarding the marketplace is imperfect and incomplete, which may in part reflect the structure of the market itself, as well as concerns regarding retaliation against growers and others for attempting to raise concerns.[73] However, as set out in detail in section II of the preamble, AMS notes a number of market impacts that underscore our concerns. While grower investment in assets, including housing and equipment, is substantial and growing, they are recruited to, or upgrade, poultry growing in reliance, substantially, on financial analyses and promises from integrators. Moreover, in part with the assistance from integrators, growers generally finance long-term assets against much shorter term production contracts, exposing them to heightened risks and uncertainty around debt repayment and the recoupment of their investments. Production contracts lack completeness around key terms needed to value those contracts, and operationally, the contracts lead to a wide range in grower payments. In many cases, returns to equity may be low. In particular, many growers have only one or two integrators in their local area from which to choose, limiting their market power to demand improved symmetry of information or changes to market practices. Indeed, decades of grower comments to USDA highlight concerns regarding persistent deception in poultry contracting and the operation of the tournament system, as well as ongoing fears of retaliation for speaking out about it. We also note that disclosure is commonly utilized across multiple markets, in particular where investment and risk exposure is taken by a party with substantially less power in a market or a transaction, such as consumer borrowers or franchisees.

AMS requests comment on impacts from current market practices and structures, including qualitative and quantitative data. Do impacts vary across different parts of the market or across different market participants? If so, how and why? Please also discuss implications for market efficiency, competition, supply chain resiliency, rural economies, or other general economic or community matters. We also invite comment on the impacts of disclosure when applied in other markets, and the relevance of those lessons for poultry markets.

AMS expects proposed §§ 201.100 and 201.214 to mitigate costs associated with asymmetric information by requiring live poultry dealers to disclose more and potentially valuable information to growers. Proposed § 201.100 would require live poultry dealers to make disclosures before entering into new contracts, renewing existing contracts, or requiring growers to make additional capital investments. Proposed § 201.214 would require live poultry dealers to disclose additional information at the placement and settlement of each flock.

AMS considered three alternatives to the proposed §§ 201.100 and 201.214. The first is ''do nothing'' or the *status quo.* All regulations under the Packers and Stockyards Act would remain unchanged. It forms the baseline against which the second alternative, proposed §§ 201.100 and 201.214 will be compared. The proposed rule would remove portions of the current § 201.100, which already requires disclosure from live poultry dealers, and replaces them with a more extensive set of disclosure requirements. Not all the disclosure requirements in proposed § 201.100 are new. Many of the provisions in the proposed § 201.100 are already required in the current § 201.100. Since the cost and benefit analysis will be compared to the cost and benefits to the *status quo,* costs and benefits estimated here will reflect only cost and benefits associated with the new requirements in § 201.100.

AMS considered a third alternative similar to proposed §§ 201.100 and 201.214. The alternative would leave all of the requirements in proposed §§ 201.100 and 201.214 the same, but entirely exempt live poultry dealers that process less than 2 million lbs. per week. This third alternative would exempt smaller live poultry dealers, some of which might not have sophisticated records. However, since larger growers do most of the contracting (as quantified later in this analysis), most poultry growers would still receive the disclosures. AMS then estimates and compares the costs and benefits of the alternatives and selects proposed §§ 201.100 and 201.214 as the preferred alternative.

Discussion of the Benefits of the Proposed Regulations

The primary purpose of the proposed rule is to make information available to growers when that information would be most important in decision-making. Currently, most production contracts are incomplete, and providing more information would likely lower the uncertainty the grower faces over their revenue and profit estimates. In addition, growers lack negotiating leverage with integrators to demand, among other things, transparency and completeness in contracts. A benefit of this proposed regulation would be that by providing prospective growers and those contemplating additional capital investments better information on expected returns, growers should be able to make more informed business decisions and can more readily avoid entering into contracts that are not financially sustainable. The proposed regulation would still retain the rights of poultry growers to discuss the terms of the poultry growing arrangement and the Live Poultry Dealer Disclosure Document with each other, advisors, and governmental agencies even if the poultry growing arrangement contains a confidentiality provision. This should facilitate better information sharing, decision making, and management of risk.

Better information on integrator commitments should reduce hold-up concerns that may stifle investment. Better information and transparency on placements and settlements could reduce grower concerns over integrator manipulation of inputs and reduces the potential for deception or fraud, and the high degree of control and influence that the live poultry dealer has over many, if not most, of the critical inputs that will determine the business success of the grower's operation.

Alternatively, the placement and settlement information could provide growers with concrete information they can use to support, individually or collectively, any grievances they might have with a particular integrator. At the same time, this proposed regulation provides growers a measure of protection against risks of retaliation or discrimination that may arise from disputes with integrators during the course of the poultry growing arrangement.

The proposed § 201.100 lays out the information that an integrator would be required to provide to growers contemplating a relationship with that integrator. The disclosure of information would be required whenever an integrator seeks to renew, revise, or replace an existing poultry growing arrangement. In addition, such disclosure would be required for any new contract as well as whenever an integrator is requiring an original capital investment or a change to existing housing specifications that would

[73] As recently as April 2022, retaliation against potential witnesses was raised in both House and Senate hearings on livestock market competition. Retaliation was also asserted to have followed the 2010 listening sessions regarding poultry and has been repeatedly raised by growers around the need for USDA Packers and Stockyards Act rulemakings. Fear of retaliation has even been asserted as adversely affecting data collection by USDA in the poultry markets and the ability for growers to work with the Extension service.

require an additional capital investment. These are the times when the information would be most useful in informing growers of the potential implications of entering into a contract with the integrator or contemplating additional investment in capital stock. This information should allow potential growers to make more informed and financially sustainable business decisions.

When a live poultry dealer requires capital investment, the dealer would be required to provide the grower with the capital specifications they are required to meet and with a letter of intent sufficient to seek financing, as well as a full disclosure of the terms of the agreement. This information would allow more informed investment decisions and help potential lenders accurately assess risk.

The Disclosure Document would provide information on the length of the contract, number of guaranteed placements, stocking density, and notification of certain risks inherent in the agreement. All this information should help in evaluating the longer-term viability of the investment and reduce hold-up fears.

Grower awareness of minimum flock placements and minimum stocking densities would enable growers to more accurately estimate the risks and returns associated with their operations, including debt management, cash flow, and other risks. It may enable growers, as well as financial institutions, to better estimate and manage risk, including potentially the acquisition of external insurance and risk management products.

In addition to information about the specific terms of the contract, information would be provided that informs growers about the integrator's financial history and history of grievances with growers with whom they have contracted. This information too should improve the ability of the grower to evaluate its decision and the potential for hold-up related concerns.

The Disclosure Document would include information on the level and distribution of payments made to growers under contract to the integrator. It describes past and expected future annual returns for similarly situated growers based on the complex and the integrator's other complexes on the particular housing specifications. This would make it much easier for potential growers to estimate their revenues from the contract because it presents returns at various levels of performance, as not all growers perform equally relative to the fixed cost of entry. The Disclosure Document would also provide insights into the variability of cash flow within any given year to enable the grower to improve business decision-making and manage risk. The increased information in the Disclosure Document on the expected levels and distributions of payments has the added benefit of lowering the uncertainty of revenue streams of contract poultry growers.

The reliability of these disclosures would be reinforced by a governance framework and anti-fraud protections. In presenting this information to growers, the Disclosure Document would dramatically reduce information asymmetry and the risk of fraud and deception. As a result, prospective growers and those contemplating additional capital investments would have more confidence in the integrity of the information and consequently in their ability to make sound decisions.

A live poultry dealer would be required to provide the Disclosure Document to growers prior to their entering into an agreement to allow time to discuss the terms of the agreement with advisors, lawyers, business associates, bankers, USDA, or other extension organizations to get assistance in evaluating the agreement.

The proposed § 201.214 would require additional ongoing disclosure of information related to poultry grower ranking pay systems (''tournaments''). This information would be focused on the actual distribution of inputs to growers at the time of placements and the outcomes of the ranking system. Some of this information would improve growers' ability to manage the flocks under their care, while other information helps growers to evaluate the factors affecting the outcome of the ranking system.

Lack of transparency in the tournament calculations has led to risks by growers relating to the potential for fraud and deception. These include the inability of growers to verify the accuracy of payments, the inability to measure and manage risks, and the inability to detect possible discrimination or retaliation for disputes arising under the poultry growing arrangement. The provision of additional transparency around tournament systems in this proposed regulation is designed to address those risks. Provision of information regarding consistency of inputs (both at the time of placement and at the time of settlement), and any adjustments to methods or formulas, would foster more transparent, accurate, reliable, and widely accepted tournaments, and greater ability to monitor and hold live poultry dealers accountable for divergences from high standards of market integrity.

Growers who participate in numerous tournaments over time would benefit from the added information they would receive at the time of placement and settlement, as they would gain valuable experience and knowledge useful in maximizing their growout performance. Because integrator-provided inputs may vary from flock-to-flock, grower knowledge may be enhanced and grower management practices and skills improved with access to input distribution information, particularly at the stage when the input is provided. The increased information in the settlement and placement disclosures would allow growers to assess the impacts of input variability on revenues over time, which would also serve to lower the uncertainty of revenue streams. Growers armed with this information may be better able to efficiently allocate resources, reduce uncertainty of revenue streams, and maximize their individual profitability.

Confidentiality restrictions have historically prevented broiler growers from releasing details of contract pay and performance, thus limiting the availability of comprehensive data with which to consider the effects of alternative regulatory and institutional structures on market performance.[74] Subsequently, the literature on these topics is insufficient to allow AMS to fully estimate the magnitude of the inefficiencies corrected by the proposed rule, nor the degree to which the proposed disclosure requirements and additional grower protections would address them. Though AMS is unable to completely quantify the benefits of the regulations, this analysis has explained numerous benefits derived from increased information, reduced information asymmetries, and reduction in risk of deception by live poultry dealers. Each of the disclosures required under §§ 201.100 and 201.214 of the proposal would provide information that should be useful to growers in making more informed decisions and reducing grower concerns resulting from lack of access to information.

AMS will estimate the industry benefits in two parts, one quantified and the other non-quantified. For the quantitative part, AMS will provide a minimum value of the benefit to poultry growers from the additional information in the disclosures required under

[74] For instance, the analysis of MacDonald (2014), MacDonald and Key (2014), and Vukina and Leegomanchai (2006) (Op. Cit.) relies on data from grower surveys. Knoeber and Thurman (1995) relies on contract settlement data from a single integrator.

§§ 201.100 and 201.214 and will refer to this minimum benefit as G_{min}.

The quantifiable minimum benefit of the financial, placement, and settlement disclosures, G_{min}, arises from the additional information available to growers that serves to lower the uncertainty in revenue streams of contract growers. Lower uncertainty in revenue streams results in a reduction in revenue risks to growers. According to economic principles, a risk averse grower will benefit economically from a reduction in revenue risk.[75] AMS quantifies the benefit to growers from the reduction in revenue risk by estimating the Risk Premium (RP) to contract poultry growers from reducing variability of their net revenues from the disclosures. AMS will then use RP as G_{min}, the quantifiable minimum benefit of the disclosures.

However, proposed §§ 201.100 and 201.214 have additional, other non-quantified benefits to growers and live poultry dealers, referred to as B_O.[76] The other benefits would arise from a reduction in risk of retaliation by allowing growers to share information even if the growing arrangement contains a confidentiality provision and reducing the potential for fraud and deception by live poultry dealers by providing better, more accurate, and verifiable information to growers. These other benefits may lead to an improved allocation of capital and labor resources (such as increased capital investment through the reduction in perceived hold-up risk, and more informed decisions on whether and with whom to enter into a growing arrangement), leading to improved efficiencies and an improved allocation of resources for poultry growers and live poultry dealers.

AMS refers to the total benefits to the industry as B_T, which is the sum of the quantified G_{min}, and the non-quantified B_O, benefits or, $B_T = G_{min} + B_O$. AMS is not able to fully quantify the total benefits, B_T, from improved grower information, more informed decision-making, reduced revenue uncertainty, grower risk reductions, and an improved allocation of resources. The benefits AMS was able to quantify exceed the costs AMS was able to quantify. AMS requests comment on important categories of costs or benefits that may have been left out of this analysis and on means of estimating their magnitude.

AMS expects that the effects on the industry from the proposed rules will be very small in relation to the total value of industry production. In other words, AMS expects the impacts on total industry supply to be immeasurably small, leading to immeasurably small indirect effects on industry supply and demand, including price and quantity effects.

Estimation of Costs and Benefits of the Proposed Regulations

AMS estimates cost and benefits for two alternatives. The first is the proposed §§ 201.100 and 201.214, which is the preferred alternative. The second alternative is the same as proposed §§ 201.100 and 201.214 with a complete exemption for live poultry dealers that process fewer than 2 million pounds per week. Both are compared against a baseline of *status quo,* which has no costs or benefits.

The quantified costs of proposed §§ 201.100 and 201.214 primarily consist of the time required to gather the information and distribute it among the growers. The costs of the proposed rules would fall on live poultry dealers as they collect and disseminate the required information, and on poultry growers based on the value of the time they put into reviewing the disclosures. Though poultry growers are expected to incur costs in reviewing the information, they would be the primary beneficiaries of the information, which would be reflected in their ability to make more informed decisions. The growers must review the information in order to realize the benefits. This may result in a more efficient allocation of capital to the poultry growing industry.

There are 89 live poultry dealers that file annual reports with AMS, and their reports indicate that they had 23,047 contracts with poultry growers during their fiscal year 2020.

AMS expects the direct costs and benefits would be very small relative to overall production costs and would not measurably alter the poultry supply. AMS also expects that neither live poultry dealers nor poultry growers would measurably change any production practices that would impact the overall supply of poultry.

Expected costs are estimated as the value of the time required to produce and distribute the disclosures required by §§ 201.100 and 201.214 as well as the time required to create and maintain any necessary additional records. AMS believes most live poultry dealers already keep nearly all of the required records. Therefore, the added costs of creating the records are expected to be relatively small. AMS also estimates the amount of time that growers would take to review the information provided to them by live poultry dealers. Estimates of the amount of time required by live poultry dealers to create and distribute the disclosures and for growers to review the information were provided by AMS subject matter experts. These experts were supervisors and auditors with many years of experience in working with growers and with auditing live poultry dealers for compliance with the Packers and Stockyards Act. Estimates for the value of the time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimated released May 2020.[77]

Costs of Proposed § 201.100

Proposed § 201.100 lists a number of disclosure and record keeping requirements for live poultry dealers, but not all of them are new. Many of the requirements are included in current § 201.100. Only the new requirements would create additional costs above the *status quo.*

The new provisions in proposed § 201.100 would require large live poultry dealers to disclose a true written copy of the growing agreement and a new Disclosure Document any time 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. Small live poultry dealers that process less than 2 million lbs. of poultry per week would be excluded from this disclosure requirement. Before a live poultry dealer enters a poultry growing arrangement that would require an original capital investment or requires modifications to existing housing, both large and small live poultry dealer must provide a copy of the growing agreement, the housing specifications, a letter of intent, and the new Disclosure Document.

The Disclosure Document would require live poultry dealers to disclose summaries of litigation with any poultry growers, bankruptcy filings, and the live poultry dealer's policy regarding a grower's sale of the farm or assignment of the contract.

Live poultry dealers would be required to disclose growers' variable costs if it collects the information. Live poultry dealers would be required to audit the information to ensure accuracy

[75] A risk averse grower prefers revenue streams with low uncertainty to revenue streams with high uncertainty when both have the same mean return.

[76] In the context of this analysis, ''non-quantified'' is defined to include measures which are quantitative in principle but in value which cannot be estimated at present.

[77] See U.S. Bureau of Labor Statistics, *May 2020 National Occupational Employment and Wage Estimates,* May 2020. *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

and obtain and file signed receipts certifying that the live poultry dealer provided the required Disclosure Document.

The Disclosure Document would require two separate financial disclosures to growers. The first disclosure would be a table showing average annual gross payments to poultry growers for the previous calendar year. The table should be organized by housing specification at each complex located in the United States that is owned or operated by the live poultry dealer and should express average payments on the basis of U.S. dollars per farm facility square foot. The second disclosure would be a set of tables showing average annual gross payments per farm facility square foot in each quintile to poultry growers for each of the five previous years, organized by housing specification at each complex.

AMS estimates the aggregate one-time costs of setting up the Disclosure Document would require 6,786 management hours, 3,115 legal hours, 2,042 administrative hours, and 1,984 information technology hours costing $1,231,679 in the first year for live poultry dealers to initially set up the Disclosure Document.[78] [79] A more detailed explanation of the one-time first-year costs associated with § 201.100 is in Table 1 in Appendix 1.

AMS expects the ongoing costs of updating and distributing the Disclosure Document to growers renewing or revising existing contracts, new growers entering into contracts, existing growers required to make additional capital investments to require in aggregate 3,230 management hours, 534 legal hours, 1,121 administrative hours, and 1,181 information technology hours to produce and distribute to growers the gross payment disclosure information annually for an aggregate annual cost of $503,771. AMS expects the total cost of producing the annual gross payment disclosure information to consist of $1,231,679 in the first year to set up the systems and controls, plus $503,771 in costs the first year and annually thereafter to compile, distribute, and maintain the disclosure data and documents. Thus, the first-year aggregate total costs of proposed § 201.100 are expected to be $1,735,450 and then $503,771 annually on an ongoing basis. A more detailed explanation of the ongoing costs associated with § 201.100 is in Table 2 in Appendix 1.

With the exception of signing a receipt, the proposed rule would not impose any requirement on poultry growers to review the information provided by live poultry dealers, but to benefit from the Disclosure Document, growers would need to review the information provided. Based on AMS subject matter experts, poultry growers would spend the most time reviewing the Disclosure Document the first time they review them in order to understand the information and then spend less time reviewing subsequent disclosures. For § 201.100 (a)(1), AMS expects that growers would take about one hour to review the documents each time documents are disclosed to them in the first year. Live poultry dealers processing fewer than an average of 2,000,000 pounds of poultry weekly would be exempt from the reporting requirements, but large live poultry dealers would be required to provide disclosures to growers for each of 22,312 [80] contracts that come up for renewal in the first year. AMS expects that 74.71 percent of the contracts will require renewal in the first year. This includes all flock-to-flock contract, one-year contracts, and the portion of the longer-term contracts that will expire in the first year. At a wage of $70.94, AMS expects the requirements associated with § 201.100 (a)(1) will cost about $1,182,607 [81] in the aggregate in the first year. After the first year, as growers get familiar with the disclosures, AMS expects growers to spend less time reviewing the documents. AMS expects growers to take about five minutes reviewing each disclosure document for an aggregate cost of $98,551 [82] per year.

For the remaining contracts that will not be renewed in the first year, AMS expects that 5 percent of the contracts will be renewed in each of the next five years. At for a yearly cost of $79,136.[83]

Section 201.100 (a)(2) and (3) would only apply to growers that are new entrants and to growers making significant upgrades to poultry. AMS expects that each of these groups of growers will account for 5 percent of the 23,047 [84] contracts live poultry dealers reported in their annual reports to AMS. If growers, require one hour at $70.94 per hour, growers' aggregate costs would be $81,714 [85] for reviewing documents required in § 201.100 (a)(2) and an additional $81,714 [86] for reviewing documents required in § 201.100 (a)(3) in the first year and in each successive year.

AMS estimates growers' aggregate costs for reviewing and acknowledging receipt of disclosures associated with proposed § 201.100 to be $1,588,714 in the initial year, $341,172 through year five, and then $262,036 in each succeeding year.[87] The costs would decline after year five because AMS expects that all contracts would have been renewed by the end of year five and that all growers would have reviewed the Disclosure Document at least one time by year six. The Agricultural Census reports that there were 16,524 contract poultry growers in the United States in 2017.

The ten-year total costs of proposed § 201.100 to all 89 live poultry dealers are estimated to be $6,269,387 and the present value (PV) of the ten-year total costs to be $5,493,072 discounted at a 3 percent rate and $4,689,377 at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be $643,956 and $667,662 discounted at a 7 percent rate.

The ten-year aggregate total costs of proposed § 201.100 to poultry growers are estimated to be $4,263,582 and the present value of the ten-year total costs to be $3,808,846 discounted at a 3 percent rate and $3,330,831 at a 7 percent rate. The annualized costs of the PV of ten-year costs to poultry growers discounted at a 3 percent rate are expected to be $446,513 and $474,235 discounted at a 7 percent rate.

The ten-year aggregate total costs of proposed § 201.100 to live poultry dealers and poultry growers are estimated to be $10,532,969 and the present value of the ten-year total costs

[78] Average hourly wage rates used to estimate dealer costs include a 41.56% markup for benefits and are as follows: Management—$93.20, Legal—$113.80, Administrative—$39.69, and Information Technology—$82.50.

[79] The one-time set-up costs are not equal to the first-year costs of proposed § 201.100 because the first-year costs include the one-time set-up costs and the ongoing costs that would be incurred in the first year as contracts are renewed or revised.

[80] Live poultry dealers processing an average of more than 2,000,000 pounds of poultry per week, reported a combined 22,312 poultry contracts in their annual reports to AMS.

[81] 1 hour to review each disclosure × $70.94 per hour × 22,312 contracts × 74.71 percent of the contracts renewed in the first year = $1,182,607.

[82] 1/12 hour to review each disclosure × $70.94 per hour × 22,312 contracts × 74.71 percent of the contracts renewed in the first year = $1,182,607.

[83] 1 hour to review each disclosure × $70.94 per hour × 22,312 contracts × 5 percent of the contracts renewed per year = $79,136 per year.

[84] Live poultry dealers reported a combined total of 23,047 contracts for their fiscal year 2020. Smaller live poultry dealers would not be exempt from reporting requirements in § 201.100 (a)(2) or (3).

[85] 1 hour to review each disclosure × $70.94 per hour × 23,047 contracts × 5 percent of growers that are new entrants = $81,743.

[86] 1 hour to review each disclosure × $70.94 per hour × 23,047 contracts × 5 percent of growers that require significant housing upgrades = $81,743.

[87] The average hourly wage rate used to estimate poultry grower costs includes a 41.56% markup for benefits and is as follows: Management—$70.94.

to be $9,301,918 discounted at a 3 percent rate and $8,020,209 at a 7 percent rate. The annualized costs of the PV of ten-year costs to live poultry dealers and poultry growers discounted at a 3 percent rate are expected to be $1,090,469 and $1,141,897 discounted at a 7 percent rate. aggregate

Costs of Proposed § 201.214

Disclosures that would be required in proposed § 201.214 are associated with tournament or relative performance contracts. At the time of placement, proposed § 201.214 would require live poultry dealers to provide specific information concerning the inputs, including feed, chicks, medication, etc., that the live poultry dealer provided to the grower. At the time of settlement, it would require the live poultry to provide specific information about inputs provided to every other grower in the tournament or ranking pool within 24 hours of flock delivery. Similar information on inputs must also be disclosed at settlement.

AMS estimates that the live poultry dealers' one-time aggregate costs of developing the placement and settlement disclosure documents would require 1,335 management hours, 979 administrative hours, and 3,738 information technology hours costing $471,675 in the first year to initially set up the disclosure documents required by § 201.214.[88] A more detailed explanation of the one-time first-year costs associated with proposed § 201.100 is in Table 3 in Appendix 1.

AMS expects the § 201.214 disclosure documents would require an additional 3,201 hours divided evenly among management, administrative, and information technology staff to produce, distribute, and maintain the disclosure documents each year on an ongoing basis for an aggregate annual cost of $229,838. A more detailed explanation of the ongoing costs associated with proposed § 201.214 is in Table 4 in Appendix 1.

AMS expects the aggregate cost of producing the proposed § 201.214 pre-flock placement and settlement disclosure documents to consist of $471,675, in the first year to set up the systems and controls, plus $229,838 in costs the first year and annually thereafter to compile, distribute, and maintain the placement and settlement disclosure documents. Thus, the aggregate first-year total costs to live poultry dealers of proposed § 201.214 are expected to be $701,513 and then $229,838 annually on an ongoing basis.

Proposed § 201.214 (a) concerns disclosures of inputs to growers in tournament settlement systems. Live poultry dealers would be required to disclose information about inputs, such as feed, medication, chick, etc. for each flock placed with a grower. AMS expects that for the first time a grower receives the disclosure document, he or she would require about 10 minutes to review each of the disclosure documents. At $70.94 per hour, the first disclosure document would cost growers $156,286.[89] After the reviewing the documents the first time, AMS expects that growers would need only 5 minutes to review successive disclosures. Since growers average 4.5 flocks per year, AMS expects that reviewing the disclosure documents concerning inputs would cost in the aggregate an additional $273,500[90] for the remaining 3.5 flocks in the first year and $351,000[91] for the 4.5 flocks in each successive year.

Proposed § 201.214 (c) concerns disclosures of about the group of growers in settlement groups in tournament settlement systems. Live poultry dealers would be required to disclose information about growers in each tournament for each flock settled in tournament system. AMS expects that the cost to growers associated with proposed § 201.214 (c) will be identical to the costs of reviewing the disclosures required in proposed § 201.214 (a). Aggregate costs would be $156,286[92] for the disclosures reviewed. AMS expects that reviewing the disclosure documents would cost an additional $273,500[93] for the remaining 3.5 flocks in the first year and $351,000[94] for the 4.5 flocks in each successive year.

AMS estimates growers' aggregate costs for reviewing disclosures associated with proposed § 201.214 to be $859,571 in the first year and $703,285 in each subsequent year. AMS expects that poultry growers would spend the most time reviewing the placement and settlement disclosures the first time in order to understand the information and then spend less time for each subsequent review.

The ten-year aggregate total costs of proposed § 201.214 to live poultry dealers are estimated to be $2,770,055 and the present value of the ten-year total costs to be $2,418,502 discounted at a 3 percent rate and $2,055,104 at a 7 percent rate. The annualized costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be $283,522 and $292,601 discounted at a 7 percent rate.

The ten-year aggregated total costs of proposed § 201.214 to poultry growers are estimated to be $7,189,136 and the present value of the ten-year total costs to be $6,150,898 discounted at a 3 percent rate and $5,085,641 at a 7 percent rate. The annualized costs of the PV of ten-year costs to poultry growers discounted at a 3 percent rate are expected to be $721,073 and $724,081 discounted at a 7 percent rate.

The costs from proposed § 201.214 would be higher for poultry growers than for live poultry dealers. There are two reasons for this. First, there are only 89 live poultry dealers while there 16,524 poultry growers. Secondly, the primary costs to the live poultry dealers are the development of the placement and settlement disclosures, while the ongoing costs to distribute and maintain them are relatively small. Each poultry grower would receive and review both a placement and settlement disclosure for each flock placed and then settled in each tournament. Thus, there are many poultry growers who would receive and review the placement and settlement disclosure with each flock every year, which explains the higher cost relative to live poultry dealers. The relative higher cost to the poultry growers would be compensated for by the benefits of the extra information they can use to make financial business decisions. The benefits will be discussed in a later section.

The ten-year aggregate total costs of proposed § 201.214 to live poultry dealers and poultry growers are estimated to be $9,959,191 and the present value of the ten-year total costs to be $8,569,399 discounted at a 3 percent rate and $7,140,745 at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to live poultry dealers and poultry growers discounted at a 3 percent rate are expected to be $1,004,595 and $1,016,681 discounted at a 7 percent rate. aggregate

[88] IT staff will be required to modify integrator information systems to compile information from past settlements to calculate the information required to be disclosed to growers.

[89] 1/6 hours × $70.94 per hour × 16,924 poultry growers × 80 percent of poultry raised in tournament systems = $156,286.

[90] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 3.5 additional flocks in the first year × 80 percent of poultry raised in tournament systems = $273,500.

[91] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 4.5 flocks per year × 80 percent of poultry raised in tournament systems = $351,000 per year.

[92] 1/6 hours × $70.94 per hour × 16,924 poultry growers × 80 percent of poultry raised in tournament systems = $156,286.

[93] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 3.5 additional flocks in the first year × 80 percent of poultry raised in tournament systems = $273,500.

[94] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 4.5 flocks per year × 80 percent of poultry raised in tournament systems = $351,000 per year.

Combined Costs of Proposed §§ 201.100 and 201.214

Combined costs to live poultry dealers for proposed §§ 201.100 and 201.214 are expected to be $2,436,964 million in the first year, and $733,609 in subsequent years. These combined costs are also reported above the Paperwork Reduction Act section as the combined costs to live poultry dealers for compliance with the reporting and recordkeeping requirements of proposed §§ 201.100 and 201.214. The combined costs for non-exempt poultry growers are expected to be $2,448,284 in the first year, $1,044,457 in years two through five, and $965,231 after year five on an ongoing basis.

The ten-year aggregate combined costs of proposed §§ 201.100 and 201.214 to live poultry dealers are estimated to be $9,039,442 and the present value of the ten-year total costs to be $7,911,574 discounted at a 3 percent rate and $6,744,481 at a 7 percent rate. The annualized aggregate combined costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be $927,478 and $960,262 discounted at a 7 percent rate.

The ten-year aggregate combined costs of proposed §§ 201.100 and 201.214 to poultry growers are estimated to be $11,452,718 and the present value of the ten-year total costs to be $9,959,744 discounted at a 3 percent rate and $8,416,473 at a 7 percent rate. The annualized aggregate combined costs of the PV of ten-year costs to poultry growers discounted at a 3 percent rate are expected to be $1,167,586 and $1,198,316 discounted at a 7 percent rate. The costs to poultry growers from proposed §§ 201.100 and 201.214 would be higher for poultry growers than live poultry dealers for the reasons discussed above.

The ten-year aggregate combined costs of proposed §§ 201.100 and 201.214 to live poultry dealers and poultry growers are estimated to be $20,492,160 and the present value of the ten-year aggregate combined costs to be $17,871,317 discounted at a 3 percent rate and $15,160,954 at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to live poultry dealers and poultry growers discounted at a 3 percent rate are expected to be $2,095,064 and $2,158,579 discounted at a 7 percent rate. aggregate

Additionally, there may be costs associated with providing this information (such as decreases in profitability or increased risks to integrators).[95] We request comment on whether there may be unintended adverse consequences of the expanded disclosure requirements and what data and methods might be available to estimate the magnitude of such costs.

Benefits of Proposed §§ 201.100 and 201.214

As discussed above, AMS will estimate the industry benefits from proposed §§ 201.100 and 201.214 in two parts, one quantified and the other non-quantified. For the quantified part, AMS will provide a minimum value of the combined benefit to poultry growers from the additional information in the disclosures required under proposed §§ 201.100 and 201.214 and will refer to this minimum benefit as G_{min}. AMS first estimates G_{min} and then discusses the non-quantified benefits of the proposed rules.

AMS estimates G_{min} as the combined benefits to growers of proposed §§ 201.100 and 201.214 from the reduction in profit uncertainty. AMS expects the majority of the benefits of reduced profit uncertainty will result from additional information in the financial disclosures under proposed § 201.100 as these disclosures provide revenue projections at different performance percentiles over different housing types. AMS expects that the additional information received in placement and settlement disclosures under proposed § 201.214 regarding the effects of input variability on revenue variability will also result in reduced profit uncertainty, though to a lesser extent than the financial disclosures. AMS was not able to allocate the benefits between proposed §§ 201.100 and 201.214 and presents just the total combined minimum quantifiable benefits of both proposed rules.

A potential benefit of the contract disclosure rules providing increased transparency is that doing so could lower the uncertainty in a contract grower's revenue stream. According to economic principles, a risk averse producer will benefit economically from a reduction in revenue uncertainty. Given assumptions about the level of risk aversion of the producer, the distribution of a contract grower's revenue, and the grower's utility function,[96] it is possible to calculate a grower's benefits of decreased revenue uncertainty associated with greater transparency. AMS relied on an empirical approach to estimate the minimum benefits, defined as a Risk Premium (RP), to contract poultry growers of a range of reductions in the variability of their net revenue.[97]

The following table presents the G_{min} benefit estimates based on RP estimates for the first year for several scenarios of reduction in the variability of net revenue and two assumptions for a risk aversion premium (RAP) and two assumptions for how risk aversion changes with wealth. For the latter, constant absolute risk aversion (CARA) assumes that the grower's risk aversion does not change as wealth increases. Decreasing absolute risk aversion (DARA) assumes the grower's risk aversion increases as wealth decreases. Another possibility is that the grower's risk aversion is increasing in wealth (IARA). While no evidence exists one way or another for how the risk preference of poultry contract growers changes with wealth, the agricultural economics literature generally assumes DARA over IARA.

Grower risk aversion (Risk aversion premium [a])	Reduction in coefficient of variation of net revenue [b]			
	1%	2%	5%	10%
	One year value			
CARA, Moderate (20%)	$1,588,000	$3,158,000	$7,758,000	$15,057,000
CARA, High (40%)	$3,760,000	$7,480,000	$18,410,000	$35,820,000
DARA, High/Moderate	$2,002,000	$3,977,000	$9,751,000	$18,866,000

[95] Knoeber and Thurman (1995) note that integrators experience relatively ''small risk-bearing costs,'' and we request comment on: (1) whether other analyses, including any using more recent data, reach similar conclusions and (b) how to quantify ''small'' for purposes of this regulatory impact analysis.

[96] A utility function is an economic concept that measures an individual's preferences over a set of goods and services.

[97] AMS prepared a technical appendix (Appendix 2) that provides an explanation of the empirical approach used to estimate the Risk Premium and is included at the end of this document.

Grower risk aversion (Risk aversion premium [a])	Reduction in coefficient of variation of net revenue [b]			
	1%	2%	5%	10%
	PV over 10 years discounted at 3%			
Moderate (20%)	$13,545,962	$26,938,381	$66,177,314	$128,439,264
High (40%)	$32,073,563	$63,805,917	$157,041,034	$305,551,866
	PV over 10 years discounted at 7%			
Moderate (20%)	$11,153,447	$22,180,471	$54,488,946	$105,754,067
High (40%)	$26,408,667	$52,536,390	$129,304,136	$251,584,691

[a] The risk aversion premium (RAP) varies between 0 and 100 percent of the potential lost revenue, with higher values reflecting higher risk aversion. A value of 20 percent is considered a reasonable reflection of moderate aversion to risk and 40 percent being reflection of high-risk aversion.

[b] The coefficient of variation of net revenue is a standardized measure of variability, and is defined as the standard deviation of net revenue divided by its mean.

The RAP varies between 0 and 100 percent of the potential lost revenue, with higher values reflecting higher risk aversion. The RP estimates assume that mean net returns are unchanged, *i.e.,* this exercise is solely valuing the reduction in grower revenue uncertainty. AMS estimates benefits under two CARA scenarios, one where the growers have moderate risk aversion, with one with a RAP of 20 percent and a high RAP of 40 percent, using contract producer revenue data for 2020. The parameters used for the DARA scenario are chosen such that the grower has a RAP of 40 percent when wealth is zero, and a RAP of 20 percent at mean wealth.

As the above table shows, one-year benefits range from $1.6 million with a 1 percent reduction in the variability of net revenue when moderate risk aversion is assumed to $36 million with a 10 percent reduction in the variability of net revenue when high risk aversion is assumed. AMS assumes growers will receive the same benefit of reduced variability of net revenue every year in which they contract. Discounting these annual values over ten years leads to a range in benefit estimates from $11 million to $306 million depending on the combination of risk aversion assumption, reduction in variability in net returns, and the discount rate.

With assumptions of moderate risk aversion and that the proposed rules would lead to a two percent reduction in the coefficient of variation in net revenue, the benefit estimate is $22 million with a discount rate of seven percent PV. The analysis summarized in Table 2 assumes that the grower maximizes an absolute risk aversion (ARA) utility function, whether CARA or DARA. The alternative to an ARA function is a relative risk aversion function (RRA) (see Appendix 2 for a discussion of ARA and RRA). We request comment on the additional data/information needed to calculate the risk premia using CRRA preferences likely to be pertinent to contract poultry growers.

AMS now discusses the non-quantified benefits of the proposed rules that increase the benefits to growers above the minimum quantifiable benefit of G_{min}, which is estimated by RP in the above table.

As discussed above, proposed §§ 201.100 and 201.214 have additional, other non-quantified benefits to the industry, referred to as B_O. First, if growers did not expect to receive at least as much in benefits as it takes in time to review the disclosures, they would not review them. Some of these benefits are captured in the quantitative estimates of the value of reduction in revenue uncertainty, but there are others benefits the growers would likely expect from these disclosures. The other benefits would arise from a reduction in risk of retaliation and the potential for fraud and deception by live poultry dealers. The additional information to growers may lead to a more optimal allocation of capital and labor resources (such as increased capital investment through the reduction in perceived hold-up risk, and more informed decisions on whether and with whom to enter into a growing arrangement), leading to improved efficiencies across the entire industry. We request comment that would facilitate both quantification of the magnitude of benefits of a more optimal allocation of capital and labor resources and tracking of whether any such efficiency gains would be captured by growers, live poultry dealers (while also noting the as-yet-unquantified costs to dealers, as mentioned elsewhere in this analysis), or others in society.

The combined minimum benefits for poultry growers, G_{min}, from reduced revenue uncertainty are expected to be $3,158,000 in the first year and on an ongoing basis.[98] The ten-year total minimum benefits of proposed §§ 201.100 and 201.214 to poultry growers are estimated to be $31,580,000 and the present value of the ten-year total minimum benefits to be $29,938,381 discounted at a 3 percent rate and $22,180,471 at a 7 percent rate. The annualized PV of ten-year minimum benefits to poultry growers discounted at 3 and 7 percent rates are expected to be $3,158,000. The total benefits to the industry, B_T, from proposed §§ 201.100 and 201.214 would be the sum of the minimum benefits to all growers, G_{min}, and the other non-quantified benefits to the industry from growers' risk reductions and a more efficient allocation of labor and capital, B_O. The values appear in Table 3 in the next section. AMS expects the total benefits to the industry from the proposed rules—as is the case for total costs, noted above—will be very small in relation to the total value of industry production.

Broiler chicken sales in the U.S. for 2019 were approximately $58.6 billion. total quantified cost of proposed §§ 201.100 and 201.214 is estimated to be greatest in the first year at $4.9 million, or .00836 percent of revenues. A relatively small improvement in efficiency from improved allocation of capital and labor resources in the industry would more than outweigh the cost of this proposed rule.

Total Quantified Combined Costs and Benefits of Proposed §§ 201.100 and 201.214

[98] All benefits estimates assume a moderate (20 percent) RAP and a 2 percent reduction in coefficient of variation of net revenue.

The cost and benefit estimates of proposed §§ 201.100 and 201.214 presented above appear in the following table.

TABLE 3—ESTIMATED COSTS AND BENEFITS[99] OF PROPOSED §§ 201.100 AND 201.214

Preferred alternative	Cost			Benefits	
	Live poultry dealer °Dealers	Poultry growers	Industry total	Individual grower (G_{min}) *	Total industry (B_T)
§ 201.100					
First-Year	$1,735,450	$1,588,714	$3,324,164	G_{min}	$G_{min} + B_O$
Ten-Year Total	6,269,387	4,263,582	10,532,969	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	5,493,072	3,808,846	9,301,918	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	4,689,377	3,330,831	8,020,209	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 3 Percent	643,956	446,513	1,090,469	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 7 Percent	667,662	474,235	1,141,897	G_{min}	$G_{min} + B_O$
§ 201.214					
First-Year	701,513	859,571	1,561,084	G_{min}	$G_{min} + B_O$
Ten-Year Total	2,770,055	7,189,136	9,959,191	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	2,418,502	6,150,898	8,569,399	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	2,055,104	5,085,641	7,140,745	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 3 Percent	283,522	721,073	1,004,595	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 7 Percent	292,601	724,081	1,016,681	G_{min}	$G_{min} + B_O$
§§ 201.100 and 201.214					
First-Year	2,436,964	2,448,284	4,885,248	3,158,000	$G_{min} + B_O$
Ten-Year Total	9,039,442	11,452,718	20,492,160	31,580,000	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	7,911,574	9,959,744	17,871,317	26,938,381	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	6,744,481	8,416,473	15,160,954	22,180,471	$G_{min} + B_O$
Ten-Year Annualized at 3 Percent	927,478	1,167,586	2,095,064	3,158,000	$G_{min} + B_O$
Ten-Year Annualized at 7 Percent	960,262	1,198,316	2,158,579	3,158,000	$G_{min} + B_O$

* AMS estimates G_{min} as the combined benefits to growers of proposed §§ 201.100 and 201.214.
° Estimates do not include unquantified costs of risk increases.

The quantified costs and minimum quantifiable benefits to the industry in the first year are $4.885 million and $3.158 million, respectively. However, the minimum quantifiable benefits exceed the quantified costs in the ten-year total, the PVs on the ten-year totals, the annualized PV of ten-year totals. This is a function of quantified costs being higher at the beginning of the program and falling off over time while the quantified benefits remain constant over the entire estimation period. Thus, AMS concludes that the quantified benefits to growers from proposed §§ 201.100 and 201.214 exceed the quantified costs of proposed §§ 201.100 and 201.214. AMS requests additional information (including data and quantification methods) that could support or refute this conclusion.

AMS expects that the net benefits to the industry from proposed §§ 201.100 and 201.214 will be very small in relation to the total value of industry production. Thus, AMS expects the impacts of the net benefits on total industry supply to be immeasurably small, leading to immeasurably small indirect effects on industry supply and demand, including price and quantity effects.

[99] Ibid.

Costs and Benefits of the Small Business Exemption Alternative

AMS estimated costs and benefits for an alternative to the preferred option for the proposed rule. It would be the same as proposed §§ 201.100 and 201.214, with the exception that the alternative would exempt live poultry dealers that process less than 2 million pounds of poultry per week from all provisions of the two proposed rules. In the preferred alternative, small businesses would be exempt from the disclosure requirements in proposed § 201.100(a)(1) only. The rest of the provisions of proposed §§ 201.100 and 201.214 would still apply.

The costs associated with this alternative are similar, but smaller than the preferred option. According to PSD records, small live poultry dealers make up 52.8 percent of all live poultry dealers, but have only 3.2 percent of poultry growing contracts. The estimation of the costs and benefits of the small business exemption alternative will follow the same format as the preferred alternative.

Costs of Proposed § 201.100—Small Business Exemption Alternative

AMS estimates the one-time costs for live poultry dealers of setting up the Disclosure Document for the small business exemption alternative would require 3,801 management hours, 1,470 attorney hours, 1,124 administrative hours, and 1,376 information technology hours costing $679,627 in the first year for live poultry dealers to set up the Disclosure Document.[100] A more detailed explanation of the one-time first-year costs associated with the alternative § 201.100 is in Table 1 in Appendix 3.

AMS expects the ongoing costs for live poultry dealers for the small business exemption alternative of updating and distributing the Disclosure Document to growers renewing or revising existing contracts, new growers entering into contracts, existing growers required to make additional capital investments to require 2,100 management hours, 252 legal hours, 865 administrative hours, and 954 information technology hours to produce, distribute to growers, and maintain the gross payment disclosure information annually for an annual cost of $337,420. A more detailed explanation of the ongoing costs associated with the alternative § 201.100 is in Table 2 in Appendix 3.

[100] As discussed previously, the one-time set-up costs are not equal to the first-year costs of proposed § 201.100 because the first-year costs include the one-time set-up costs and the ongoing costs that would be incurred in the first year as contracts are renewed or revised.

AMS expects the total cost of producing the annual gross payment disclosure information to consist of $679,627 in the first year to set up the systems and controls, plus $337,420 in costs the first year and annually thereafter to compile and distribute the disclosure data and documents. Thus, the first-year total costs of proposed § 201.100 for live poultry dealers are expected to be $1,017,047 for the small business exemption alternative and then $337,420 annually on an ongoing basis.

For alternative § 201.100 (a)(1), AMS expects that growers would take about one hour to review the documents each time documents are disclosed to them in the first year. The alternative would exempt live poultry dealers processing fewer than an average of 2,000,000 pounds of poultry weekly would be exempt from the reporting requirements, but large live poultry dealers would be required to provide disclosures to growers for each of 22,312 [101] contracts that come up for renewal in the first year. AMS expects that 74.71 percent of the contracts will require renewal in the first year. This includes all flock-to-flock contract, one-year contracts, and the portion of the longer-term contracts that will expire in the first year. At a wage of $70.94, AMS expects the requirements associated with § 201.100 (a)(1) will cost about $1,182,607 [102] in the first year in the aggregate. After the first year, as growers get familiar with the disclosures, AMS expects growers to spend less time reviewing the documents. AMS expects growers to take about five minutes reviewing each disclosure document for an aggregate cost of $98,551 [103] per year.

For the remaining contracts that will not be renewed in the first year, AMS expects that 5 percent of the contracts will be renewed in each of the next five years. At for a yearly cost of $79,136.[104]

Section 201.100 (a)(2) and (3) would only apply to growers that are new entrants and to growers making significant upgrades to poultry. AMS expects that each of these groups of growers will account for 5 percent of the 22,312 contracts live poultry dealers reported in their annual reports to AMS. If growers, require one hour at $70.94 per hour, growers' aggregate costs would be $79,136 [105] for reviewing documents required in § 201.100 (a)(2) and an additional $79,136 [106] for reviewing documents required in § 201.100 (a)(3) in the first year and in each successive year.

AMS estimates growers' aggregate costs for reviewing the Disclosure Document associated with proposed § 201.100 for the small business exemption alternative to be $1,578,286 in the initial year, $335,958 through year five, and then $256,822 in each succeeding year.

The ten-year aggregate total costs of proposed § 201.100 for the small business exemption alternative for the to live poultry dealers are estimated to be $4,053,825. The present value of the ten-year aggregate total costs of proposed § 201.100 to live poultry dealers are estimated to be $3,538,092 discounted at a 3 percent rate and $3,005,061 at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be $414,772 and $427,853 discounted at a 7 percent rate.

The ten-year aggregate total costs of proposed § 201.100 for the small business exemption alternative for poultry growers are estimated to be $4,206,231. The present value of the ten-year total costs of § 201.100 to poultry growers are estimated to be $3,759,309 discounted at a 3 percent rate and $3,289,339 at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to poultry growers discounted at a 3 percent rate are expected to be $440,706 and $468,328 discounted at a 7 percent rate. The first-year aggregate total costs of proposed § 201.100 for the small business exemption alternative for poultry growers and live poultry dealers are estimated to be $2,595,333 and the ten-year aggregate total costs of proposed § 201.100 for the small business exemption alternative for live poultry dealers and poultry growers are estimated to be $8,260,056. The present value of the ten-year aggregate total costs of § 201.100 to live poultry dealers and poultry growers are estimated to be $7,297,401 discounted at a 3 percent rate and $6,294,400 at a 7 percent rate. The annualized costs of the PV of ten-year aggregate costs to live poultry dealers and poultry growers discounted at a 3 percent rate are expected to be $855,478 and $896,181 discounted at a 7 percent rate.

Costs of § 201.214—Small Business Exemption Alternative

AMS estimates that the aggregate one-time costs of developing the placement and settlement disclosure documents for live poultry dealers under the small business exemption alternative would require 630 management hours, 462 administrative hours, and 1,764 information technology hours costing $222,588 in the first year to initially set up the placement and settlement disclosure documents. A more detailed explanation of the one-time first-year costs associated with the alternative § 201.214 is in Table 3 in Appendix 3.

AMS expects the disclosure document to require an additional 1,512 hours divided evenly among management, administrative, and information technology staff to produce, distribute, and maintain the disclosure documents each year on an ongoing basis for an annual cost of $108,463. Thus, the aggregate first-year costs are estimated to be $331,051, including the one-time set up costs and the costs of producing and distributing the placement and settlement disclosures. A more detailed explanation of the ongoing costs associated with the alternative § 201.100 is in Table 4 in Appendix 3.

For the alternative § 201.214 (a) live poultry dealers would be required to disclose information about inputs, such as feed, medication, chick, etc. for each flock placed with a grower. AMS expects that for the first time a grower receives the disclosure document, he or she would require about 10 minutes to review each of the disclosure documents. At $70.94 per hour, the first disclosure document would cost growers $73,753 in the aggregate.[107] After the reviewing the documents the first time, AMS expects that growers would only need 5 minutes to review successive disclosures. Since growers average 4.5 flocks per year, AMS expects that reviewing the disclosure documents concerning inputs would cost an additional $129,067 [108] for the remaining 3.5 flocks in the first year and $165,944 [109] for the 4.5 flocks in each successive year.

[101] Live poultry dealers processing an average of more than 2,000,000 pounds of poultry per week, reported a combined 22,312 poultry contracts in their annual reports to AMS.

[102] 1 hour to review each disclosure × $70.94 per hour × 22,312 contracts × 74.71 percent of the contracts renewed in the first year = $1,182,607.

[103] 1/12 hour to review each disclosure × $70.94 per hour × 22,312 contracts × 74.71 percent of the contracts renewed in the first year = $98,551.

[104] 1 hour to review each disclosure × $70.94 per hour × 22,312 contracts × 5 percent of the contracts renewed per year = $79,136 per year.

[105] 1 hour to review each disclosure × $70.94 per hour × 23,047 contracts × 5 percent of growers that are new entrants = $81,743.

[106] 1 hour to review each disclosure × $70.94 per hour × 23,047 contracts × 5 percent of growers that require significant housing upgrades = $81,743.

[107] 1/6 hours × $70.94 per hour × 16,924 poultry growers × 80 percent of poultry raised in tournament systems × 47.2 percent of live poultry dealers that process more than 2,000,000 head per week = $73,753.

[108] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 3.5 additional flocks in the first-year × 80 percent of poultry raised in tournament systems × 47.2 percent of live poultry dealers that process more than 2,000,000 head per week = $129,067.

[109] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 4.5 flocks per year × 80 percent of poultry

Alternative § 201.214 (c) concerns disclosures of about the group of growers in settlement groups in tournament settlement systems. Live poultry dealers would be required to disclose information about growers in each tournament for each flock settled in tournament system. AMS expects that the cost to growers associated with proposed § 201.214 (c) will be identical to the costs of reviewing the disclosures required in proposed § 201.214 (a). Aggregate costs would be $73,753.[110] for the disclosures reviewed. AMS expects that reviewing the disclosure documents would cost, in the aggregate, an additional $129,067 [111] for the remaining 3.5 flocks in the first year and $165,944 [112] for the 4.5 flocks in each successive year.

AMS estimates growers' aggregate costs for reviewing and acknowledging receipt of disclosures associated with proposed § 201.214 under the small business exemption alternative to be $405,640 in the first year and $331,887 in each subsequent year. As discussed previously, AMS expects that poultry growers would spend the most time reviewing the placement and settlement disclosures the first time in order to understand the information and then spend less time for each subsequent review.

The ten-year aggregate total costs of proposed § 201.214 under the small business exemption alternative for live poultry dealers are estimated to be $1,307,217. The present value of the aggregate ten-year total costs of proposed § 201.214 to live poultry dealers are estimated to be $1,141,315 discounted at a 3 percent rate and $969,824 at a 7 percent rate. The annualized costs of the PV of aggregate ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be $133,797 and $138,081 discounted at a 7 percent rate.

The ten-year aggregate total costs of proposed § 201.214 for the small business exemption alternative for poultry growers are estimated to be $3,392,626. The present value of the aggregate ten-year total costs of proposed § 201.214 to poultry growers are estimated to be $2,902,671 discounted at a 3 percent rate and $2,399,966 at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to poultry growers discounted at a 3 percent rate are expected to be $340,282, and $341,701 discounted at a 7 percent rate.

The first-year aggregate total costs of proposed § 201.214 under the small business exemption alternative for live poultry dealers and poultry growers are estimated to be $736,691 and the ten-year aggregate total costs are estimated to be $4,699,843. The present value of the ten-year aggregate total costs of proposed § 201.214 to live poultry dealers and poultry growers are estimated to be $4,043,986 discounted at a 3 percent rate and $3,369,790 at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to live poultry dealers and poultry growers discounted at a 3 percent rate are expected to be $474,079 and $479,782 discounted at a 7 percent rate.

Combined Costs of Proposed §§ 201.100 and 201.214—Small Business Exemption Alternative

Aggregate combined costs to live poultry dealers for proposed §§ 201.100 and 201.214 for the small business exemption alternative are expected to be $1,348,098 million in the first year, and $445,883 in subsequent years. The combined costs for poultry growers are expected to be $1,983,926 in the first year, $667,846 in years two through five, and $588,710 after year five on an ongoing basis.

The aggregate ten-year combined quantified costs of proposed §§ 201.100 and 201.214 for the small business exemption alternative for live poultry dealers are estimated to be $5,361,042 and the present value of the ten-year combined costs $4,679,407 discounted at a 3 percent rate and $3,974,885 at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be $548,569 and $565,934 discounted at a 7 percent rate.

The aggregate ten-year combined costs of proposed §§ 201.100 and 201.214 for the small business exemption alternative for poultry growers are estimated to be $7,598,857 and the present value of the ten-year combined costs are estimated to be $6,661,980 discounted at a 3 percent rate and $5,689,305 at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to poultry growers discounted at a 3 percent rate are expected to be $780,987 and $810,029 discounted at a 7 percent rate. As under the preferred alternative, the costs to poultry growers from proposed §§ 201.100 and 201.214 under the small business exemption alternative would be higher for poultry growers than live poultry dealers for the reasons discussed above.

The first-year aggregate combined costs of proposed §§ 201.100 and 201.214 under the small business exemption alternative for live poultry dealers and poultry growers are estimated to be $3,332,024 and $1,113,728 in years two through five and $1,034,592 in years six and beyond. The aggregate ten-year combined costs of proposed §§ 201.100 and 201.214 for the small business exemption alternative for live poultry dealers and poultry growers are estimated to be $12,959,899 and the present value of the ten-year combined costs are estimated to be $11,341,387 discounted at a 3 percent rate and $9,664,190 at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to live poultry dealers and poultry growers discounted at a 3 percent rate are expected to be $1,329,557 and $1,375,963 discounted at a 7 percent rate.

Additionally, there may be costs of bearing increased risk that AMS has not estimated of increasing transparency in poultry grower contracting and tournaments, which would have different effects on more or less diversified integrators. We request comment on distinguishing between large, highly diversified integrators and those that process less volume and are less diversified, for purposes of quantifying any such costs for these participants in the supply chain. Please include any comments on whether, and if so, how, a localized monopsony or oligopsony position of the integrators may also affect the ability of the integrator to control information, bear or manage risks, or shift those risks to other parties, and what implications that may have on any other costs and benefits that may be quantified or otherwise considered.

Combined Benefits of Proposed §§ 201.100 and 201.214—Small Business Exemption Alternative

According to PSD records, only 3.2 percent of poultry growing contracts are between small live poultry dealers and poultry growers. Thus, 96.8 percent of all poultry growers will receive the benefits of proposed §§ 201.100 and 201.214 under the small business exemption alternative. To estimate the

raised in tournament systems × 47.2 percent of live poultry dealers that process more than 2,000,000 head per week = $165,944 per year.

[110] 1/6 hours × $70.94 per hour × 16,924 poultry growers × 80 percent of poultry raised in tournament systems × 47.2 percent of live poultry dealers that process more than 2,000,000 head per week= $73,753.

[111] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 3.5 additional flocks in the first-year × 80 percent of poultry raised in tournament systems × 47.2 percent of live poultry dealers that process more than 2,000,000 head per week = $129,067.

[112] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 4.5 flocks per year × 80 percent of poultry raised in tournament systems × 47.2 percent of live poultry dealers that process more than 2,000,000 head per week = $165,944 per year.

minimum quantified benefits to poultry growers, G_{min}, under the small business exemption alternative, AMS multiplied the minimum quantified benefits under the preferred alternative in Table 3 by 96.8 percent.

AMS estimates the aggregate minimum benefits to growers, G_{min}, from proposed §§ 201.100 and 201.214 under the small business exemption alternative from reduced profit uncertainty to be $3,057,287 in the first year and on an ongoing basis.[113] The ten-year total minimum benefits of proposed §§ 201.100 and 201.214 to poultry growers are estimated to be $30,572,871 and the present value of the ten-year total minimum benefits to be $26,079,279 discounted at a 3 percent rate and $21,473,105 at a 7 percent rate. The annualized PV of ten-year minimum benefits to poultry growers discounted at 3 and 7 percent rates are expected to be $3,057,287.

The total benefits to the industry, B_T, from proposed §§ 201.100 and 201.214, under the small business exemption alternative, would be the sum of the minimum benefits to all growers, G_{min}, and the other benefits to the industry from growers' risk reductions and a more efficient allocation of labor and capital, B_O. The values of the estimated benefits appear in Table 4 in the next section. AMS expects the quantified minimum benefits to growers from proposed §§ 201.100 and 201.214, combined with the other non-quantified benefits to growers, to exceed the costs of proposed §§ 201.100 and 201.214 under the small business exemption alternative.

Combined Costs and Benefits of Proposed §§ 201.100 and 201.214

The aggregate cost and benefit estimates of proposed §§ 201.100 and 201.214 under the small business exemption alternative presented above appear in the following table. The quantified costs and minimum quantifiable benefits to the industry in the first year under the small business exemption alternative are $3.332 million and $3.057 million, respectively.

As with the preferred option, AMS expects that the net benefits to the industry from proposed §§ 201.100 and 201.214 under the small business exemption alternative will be very small in relation to the total value of industry production. Thus, AMS expects the impacts of the net benefits on total industry supply under the small business exemption alternative to be immeasurably small, leading to immeasurably small indirect effects on industry supply and demand, including price and quantity effects.

TABLE 4—ESTIMATED COSTS AND BENEFITS OF PROPOSED §§ 201.100 AND 201.214—SMALL BUSINESS EXEMPTION

Small business exemption alternative	Cost			Benefits	
	Live poultry dealer°	Poultry growers	Industry total	Individual grower (G_{min})*	Total Industry (B_T)
§ 201.100					
First-Year	$1,017,047	$1,578,286	$2,595,333	G_{min}	$G_{min} + B_O$
Ten-Year Total	4,053,825	4,206,231	8,260,056	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	3,538,092	3,759,309	7,297,401	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	3,005,061	3,289,339	6,294,400	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 3 Percent	414,772	440,706	855,478	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 7 Percent	427,853	468,328	896,181	G_{min}	$G_{min} + B_O$
§ 201.214					
First-Year	331,051	405,640	736,691	G_{min}	$G_{min} + B_O$
Ten-Year Total	1,307,217	3,392,626	4,699,843	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	1,141,315	2,902,671	4,043,986	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	969,824	2,399,966	3,369,790	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 3 Percent	133,797	340,282	474,079	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 7 Percent	138,081	341,701	479,782	G_{min}	$G_{min} + B_O$
§§ 201.100 and 201.214					
First-Year	1,348,098	1,983,926	3,332,024	3,057,287	$G_{min} + B_O$
Ten-Year Total	5,361,042	7,598,857	12,959,899	30,572,871	$G_{min} + B_O$
NV of Ten-Year Discounted at 3 Percent	4,679,407	6,661,980	11,341,387	26,079,279	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	3,974,885	5,689,305	9,664,190	21,473,105	$G_{min} + B_O$
Ten-Year Annualized at 3 Percent	548,569	780,987	1,329,557	3,057,287	$G_{min} + B_O$
Ten-Year Annualized at 7 Percent	565,934	810,029	1,375,963	3,057,287	$G_{min} + B_O$

* AMS estimates Gmin as the combined benefits to growers of proposed §§ 201.100 and 201.214.
° Estimates do not include unquantified cost of risk increases.

Though the small business exemption alternative would reduce costs to the industry, this alternative would deny the benefits offered by proposed §§ 201.100 and 201.214 to poultry growers who contract with small live poultry dealers. While most poultry grown and are contracted with large business, there are many small growers who would be exempt from the proposed rules under the small business exemption alternative. Under the small business exemption alternative, these poultry growers would continue to be exposed to the informational asymmetries and associated costs discussed above. AMS considered all three regulatory alternatives and believes that the preferred alternative is the best alternative as the benefits of the regulations will be captured by all poultry growers, regardless of the size of the live poultry dealer with which they contract.

H. Regulatory Flexibility Analysis

AMS is proposing amending § 201.100 and adding new § 201.214 to the regulations under the Packers and Stockyards Act. The proposed amended § 201.100 would require live poultry

[113] All benefits estimates assume a moderate (20 percent) RAP and a 2 percent reduction in coefficient of variation of net revenue.

dealers to make disclosures before entering into new contracts or renewing existing contracts. Proposed § 201.214 would require live poultry dealers to disclose information at the settlement of each flock.

Proposed § 201.100 lists a number of disclosure and record keeping requirements for live poultry dealers, but not all of them are new. Many of the requirements are included in current § 201.100. Only the new requirements would create additional costs above the *status quo.*

The new provisions in proposed § 201.100 would require large live poultry dealers to disclose a true written copy of the growing agreement and a new Disclosure Document any time 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. Small live poultry dealers that process less than 2 million lbs. of poultry per week would be excluded from this disclosure requirement. Before a live poultry dealer enters a poultry growing arrangement that would require an original capital investment or requires modifications to existing housing, both large and small live poultry dealer must provide a copy of the growing agreement, the housing specifications, a letter of intent, and the new Disclosure Document.

The Disclosure Document would require live poultry dealers to disclose summaries of litigation with any poultry growers, bankruptcy filings, and the live poultry dealer's policy regarding a grower's sale of the farm or assignment of the contract.

Live poultry dealers would be required to disclose growers' variable costs if it collects the information. Live poultry dealers would be required to audit the information to ensure accuracy and obtain and file signed receipts certifying that the live poultry dealer provided the required Disclosure Document.

The Disclosure Document would require two separate financial disclosures to growers. The first disclosure would be a table indicating average annual gross payments to poultry growers for the previous calendar year. The table would be organized by housing specification at each complex located in the United States that is owned or operated by the live poultry dealer and should express average payments on the basis of U.S. dollars per farm facility square foot. The second disclosure would be a set of tables with the average annual gross payments per farm facility square foot in each quintile to poultry growers for each of the five previous years, organized by housing specification at each complex.

Disclosures that would be required in proposed § 201.214 are associated with tournament or relative performance contracts. At the time of placement, proposed § 201.214 would require live poultry dealers to provide specific information concerning the inputs, including feed, chicks, medication, etc., that the live poultry dealer provided to the grower. At the time of settlement, it would require the live poultry to provide specific information about inputs provided to every other grower in the tournament or ranking pool within 24 hours of flock delivery. Similar information on inputs would also be disclosed at settlement.

AMS expects the disclosure requirements in §§ 201.100 and 201.214 would mitigate effects associated with asymmetric information between poultry growers and live poultry dealers. Some of the information held by live poultry dealers would be valuable to growers because it influences grower compensation in tournament contracts and might help growers in negotiating contract terms and making decisions about capital investments.

The contracts themselves are often incomplete and exhibit asymmetry in the information available to live poultry dealers and contract growers. Because live poultry dealers supply most of the inputs, much of the production information is available only to the grower from the live poultry dealer. For example, the contract grower may not know precisely how much feed it used, or how much weight the flock gained under his or her care, unless the live poultry dealer provides the information.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS).[114] SBA considers broiler and turkey producers small if sales are less than $1,000,000 per year. Live poultry dealers, NAICS 311615, are considered small businesses if they have fewer than 1,250 employees.

AMS maintains data on live poultry dealers from the annual reports these firms file with PSD. Currently, 89 live poultry dealers would be subject to the proposed regulation. Fifty-Four of the live poultry dealers would be small businesses according to the SBA standard. In their fiscal year 2020, live poultry dealers reported that they had 23,054 production contracts with poultry growers. Small live poultry dealers accounted for 1,218 contracts (5 percent).

Annual reports from live poultry dealers indicate they had 23,054 contracts, but a poultry grower can have more than one contract. The 2017 Census of Agriculture indicated that there were 16,524 poultry growers in the United States.[115] AMS has no record of the number of poultry growers that qualify as small businesses but expects that nearly all of them are small businesses.

Costs of proposed §§ 201.100 and 201.214 to live poultry dealers would primarily consist of the time required to gather the information and distribute it among the growers. Proposed §§ 201.100 and 201.214 would also cost poultry growers the value of the time they put into reviewing and acknowledging receipt of the disclosures.

Expected costs are estimated as the total value of the time required to produce and distribute the disclosures that would be required by proposed §§ 201.100 and 201.214 as well as the time to create and maintain any necessary additional records, although live poultry dealers already keep nearly all of the required records. Estimates of the amount of time required to create and distribute the disclosure documents were provided by AMS subject matter experts. These experts were auditors and supervisors with many years of experience in auditing live poultry dealers for compliance with the Packers and Stockyards Act. Estimates for the value of the time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimated released May 2020.[116] AMS marked up the wages 41.56 percent to account for benefits.

AMS estimated proposed §§ 201.100 and 201.214 combined would require a one-time first year investment of 3,616 hours of management time at $93.20 per hour costing $337,000, 1,890 hours of attorney time at $113.80 per hour costing $215,000, 1,270 hours of administrative time at $39.69 per hour costing $50,000, and 843 hours of information technology staff time at $82.50 per hour costing $70,000.

[114] U.S. Small Business Administration. *Table of Small Business Size Standards Matched to North American Industry Classification System Codes. effective August 19, 2019. https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019.pdf.*

[115] USDA, NASS. *2017 Census of Agriculture: United States Summary and State Data.* Volume 1, Part 51. Issued April 2019. p. 56. *https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf.*

[116] See U.S. Bureau of Labor Statistics, *May 2020 National Occupational Employment and Wage Estimates,* May 2020. *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

Aggregate total first-year setup costs are expected to be $672,000. AMS expects proposed § 201.100 would annually require an additional aggregate 1,402 hours of management time at $93.20 per hour costing $131,000, 312 hours of attorney time at $113.80 per hour costing $35,000, 493 hours of administrative time at $39.69 per hour costing $20,000, and 312 hours of information technology staff hours at $82.50 per hour costing $26,000 to keep and maintain records and produce and distribute the disclosures. Total aggregate first-year costs to small live poultry dealers for proposed § 201.100 are expected to be $883,000. After the first year AMS expects aggregate cost to small live poultry dealers to be $211,000 annually.

AMS estimated proposed § 201.214 would require a one-time first year aggregate investment of 810 hours of management time at $93.20 per hour costing $75,000, 594 hours of administrative time at $39.69 per hour costing $24,000, and 2,268 hours of information technology staff time at $82.50 per hour costing $187,000. Total aggregate first-year setup costs are expected to be $286,000. AMS expects proposed § 201.214 would annually require an aggregate additional 1,295 hours distributed evenly across management, administrative, and information technology staff at $93.30, $39.60, and $82.50 per hour, respectively, costing $60,000, $26,000, and $53,000 respectively to keep and maintain records and produce and distribute the disclosures. Total aggregate first-year costs to small live poultry dealers for proposed § 201.214 are expected to be $426,000. After the first year, aggregate costs are expected to be $139,000 annually.

The proposed rule would regulate live poultry dealers' contracts. AMS expects that costs per live poultry dealer would be correlated with number of contracts. All expected costs of proposed § 201.100 are associated with maintaining records and producing and distributing disclosure documents among contract growers. AMS expects that firms that contract with few growers will have lower costs. Larger live poultry dealers will tend to have more contracts and will likely have more costs. Proposed § 201.214 only concerns relative performance or tournament contracts. Smaller live poultry dealers that do not have tournament contracts will not have any of the costs associated with proposed § 201.214, and some live poultry dealers have few contracts with poultry growers and raise poultry in their own facilities. Those dealers will have relatively lower costs.

AMS does not regulate poultry growers, and, with the exception of signing a receipt, the proposed rule has no requirements of poultry growers. To benefit from the disclosures, they would need to review the information provided. Growers are not required to review the disclosure information in proposed §§ 201.100 and 201.214, and growers that do not expect a benefit from reviewing the disclosure information likely would not review it.

AMS estimates aggregate growers' costs for reviewing disclosures associated with proposed §§ 201.100 and 201.214 combined to be $608,000 in the initial year. After poultry growers become familiar with the disclosures, they would likely require less time to review the documents, and AMS expects annual aggregate costs to growers would be $445,000 for years two through five and $440,000 each year thereafter. This amounts to $508 per grower in the first year. The table below summarizes costs of proposed §§ 201.100 and 201.214 to small live poultry dealers and small poultry growers.

TABLE 5—ESTIMATED COSTS TO SMALL BUSINESSES OF PROPOSED §§ 201.100 AND 201.214

Type of cost	Regulated live poultry dealers (dollars)	Unregulated growers (dollars)	Total (dollars)
Proposed § 201.100			
First-year Cost	883,000	86,000	970,000
First-year Cost per Firm	16,000	99	NA
NPV of Ten-year Cost Discounted at 3 Percent	2,456,000	205,000	2,661,000
NPV of Ten-year Cost Discounted at 7 Percent	2,113,000	180,000	2,293,000
Ten-year Cost Annualized at 3 Percent	288,000	24,000	312,000
Ten-year Cost Annualized at 7 Percent	301,000	26,000	326,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	5,300	28	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	5,600	29	NA
			123
			217
Proposed § 201.214			
First-year Cost	426,000	522,000	947,000
First-year Cost per Firm	8,000	489	NA
NPV of Ten-year Cost Discounted at 3 Percent	1,467,000	3,732,000	5,199,000
NPV of Ten-year Cost Discounted at 7 Percent	1,247,000	3,086,000	4,333,000
Ten-year Cost Annualized at 3 Percent	172,000	438,000	610,000
Ten-year Cost Annualized at 7 Percent	178,000	439,000	617,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	3,200	501	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	3,300	503	NA
Proposed §§ 201.100 and 201.214			
First-year Cost	1,309,000	608,000	1,917,000
First-year Cost per Firm	24,000	505	NA
NPV of Ten-year Cost Discounted at 3 Percent	3,923,000	3,937,000	7,861,000
NPV of Ten-year Cost Discounted at 7 Percent	3,360,000	3,265,000	6,625,000
Ten-year Cost Annualized at 3 Percent	460,000	462,000	922,000
Ten-year Cost Annualized at 7 Percent	478,000	465,000	943,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	8,500	529	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	8,900	532	NA
			387
			662

Live poultry dealers report net sales in annual reports to AMS. Table 6 below groups small live poultry dealers' net sales into quartiles, reports the average net sales in each quartile, and compares average net sales to average expected first-year costs per firm for each of proposed § 201.100 and proposed § 201.214 and total first-year costs. Estimated first-year costs are higher than 10-year annualized costs, and for the threshold analysis, first-year costs will be higher than annualized costs as percentage of net sales. Correspondingly, the ratio of ten-year annualized costs to net sales is lower than their corresponding first-year cost ratios listed in Table 6. If estimated costs meet the threshold in the first-year, they will in the following years as well.

Estimated first-year costs per firm are less than 1 percent of average net sales in the three largest quartiles. Percentage of net sales are about 2.2 percent in the smallest quartile. However, average first year cost per entity in Table 6 is the average cost of all of the small businesses. Costs for the live poultry dealers in smallest quartile will likely be less than the average for small businesses.

Live poultry dealers do not report to AMS whether any of their contracts are tournament style contracts, but evaluating the number contracts that live poultry dealers listed in their annual reports to AMS, few of the live poultry dealers in smallest quartile contracted with a sufficient number of growers to implement tournament contracts. It is unlikely that any of the live poultry dealers in the smallest quartiles had any tournament contracts. It is unlikely that several of the smaller live poultry dealers in the second quartile had any tournament contracts either. AMS encourages comments concerning whether small live poultry dealers make tournament-style contracts with growers, and AMS encourages comments concerning a minimum number of contracts necessary for a live poultry dealer to make tournament contracts with growers.

Since proposed § 201.214 only applies to tournament contracts, none of the live poultry dealers in the smallest quartile are likely to incur any costs from proposed § 201.214. Their costs are likely only costs associated with proposed § 201.100, which, as percentage of net sales would be 1.6 percent. Because the smallest live poultry dealers have fewer contracts than the other small live poultry dealers, their costs associated with proposed § 201.100 are also likely less than average.

TABLE 6—COMPARISON OF SMALL LIVE POULTRY DEALERS' NET SALES TO EXPECTED ANNUALIZED COSTS OF PROPOSED §§ 201.100 AND 201.214

Quartile	Average net sales (dollars)	First year costs related to § 201.100 as a percent of net sales (percent)	First year costs related to § 201.214 as a percent of net sales (percent)	Total first year costs as a percent of net sales (percent)
0 to 25 percent	1,101,680	1.452	0.726	2.178
25 to 50 percent	7,544,954	0.212	0.106	0.318
50 to 75 percent	33,855,515	0.047	0.024	0.071
75 to 100 percent	160,414,027	0.010	0.005	0.015

AMS also estimated costs of an alternative proposal that would exempt most small live poultry dealers from the requirements of the proposed regulations. The alternative would exempt all live poultry dealers that process less than 2 million pounds of poultry per week from all reporting requirements. The alternative would exempt all but 7 of the firms that qualify as small businesses by the SBA standard.

AMS estimated the alternative to proposed § 201.100 would require a one-time first year aggregate investment of 634 hours of management time at $93.20 per hour costing $59,000, 245 hours of attorney time at $113.80 per hour costing $28,000, 200 hours of administrative time at $39.69 per hour costing $8,000, and 163 hours of information technology staff time at $82.50 per hour costing $13,000. Aggregate total first-year setup costs are expected to be $108,000. AMS expects the alternative proposal for § 201.100 would annually require an additional aggregate 283 hours of management time at $93.20 per hour costing $26,000, 42 hours of attorney time at $113.80 per hour costing $5,000, 77 hours of administrative time at $39.69 per hour costing $3,000, and 56 hours of information technology staff hours at $82.50 per hour costing $5,000 to keep and maintain records and produce and distribute the disclosures. Aggregate total first-year costs to small live poultry dealers for proposed § 201.100 are expected to be $147,000. After the first year AMS expects aggregate costs to small live poultry dealers to be $39,000 annually.

AMS estimated proposed alternative § 201.214 would require a one-time first year aggregate investment of 630 hours of management time at $93.20 per hour costing $59,000, 462 hours of administrative time at $39.69 per hour costing $18,000, and 98 hours of information technology staff time at $82.50 per hour costing $8,000. Aggregate total first-year setup costs are expected to be $85,000. AMS expects proposed alternative § 201.214 would annually require an additional aggregate 98 hours distributed evenly across management, administrative, and information technology staff at $93.30, $39.60, and $82.50 per hour, respectively, costing $3,000, $1,300, and $2,700 respectively to keep and maintain records and produce and distribute the disclosures. Aggregate total first-year costs to small live poultry dealers for proposed alternative § 201.214 are expected to be $92,000. After the first year, costs are expected to be $7,000 annually.

The proposed alternative would have a relatively small effect on costs to poultry growers on a per grower basis, and growers will only review the disclosures if they perceive that they are beneficial. AMS estimates growers' aggregate costs for reviewing and acknowledging receipt of disclosures associated with proposed §§ 201.100 and 201.214 to be $34,000 in the initial year. AMS expects annual aggregate costs to growers would be $63,000 for years two through five and $61,000 each year thereafter. Table 7 below summarizes aggregate costs of proposed alternative §§ 201.100 and 201.214 combined to small live poultry dealers and small poultry growers.

TABLE 7—ESTIMATED COSTS TO SMALL BUSINESSES OF PROPOSED ALTERNATIVE §§ 201.100 AND 201.214

Type of cost	Regulated live poultry dealers (dollars)	Unregulated growers (dollars)	Total (dollars)
Alternative § 201.100			
First-year Cost	147,000	34,000	181,000
First Year-Cost Per Firm	21,000	99	NA
NPV of Ten-year Cost Discounted at 3 Percent	436,000	81,000	518,000
NPV of Ten-year Cost Discounted at 7 Percent	374,000	71,000	445,000
Ten-year Cost Annualized at 3 Percent	51,000	10,000	61,000
Ten-year Cost Annualized at 7 Percent	53,000	10,000	63,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	7,300	28	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	7,600	29	NA
			24
			42
Alternative § 201.214			
First-year Cost	92,000	68,000	160,000
First Year-Cost Per Firm	8,000	99	NA
NPV of Ten-year Cost Discounted at 3 Percent	143,000	484,000	627,000
NPV of Ten-year Cost Discounted at 7 Percent	129,000	400,000	529,000
Ten-year Cost Annualized at 3 Percent	17,000	57,000	73,000
Ten-year Cost Annualized at 7 Percent	18,000	57,000	75,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	2,400	164	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	2,600	164	NA
			31
			53
Alternative §§ 201.100 and 201.214			
First-year Cost	239,000	102,000	341,000
First Year-Cost Per Firm	24,000	295	NA
NPV of Ten-year Cost Discounted at 3 Percent	579,000	565,000	1,144,000
NPV of Ten-year Cost Discounted at 7 Percent	503,000	471,000	974,000
Ten-year Cost Annualized at 3 Percent	68,000	66,000	134,000
Ten-year Cost Annualized at 7 Percent	72,000	67,000	139,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	9,700	191	.....
Average Ten-Year Cost per Firm Annualized at 7 Percent	10,300	194	NA
			55
			95

Net sales for small live poultry dealers that would be required to make disclosure under proposed alternative §§ 201.100 and 201.214 averaged $159 million for their fiscal year 2020. Expected first-year cost per live poultry dealer would be well below 0.1 percent. Clearly, exempting live poultry dealers that process less than 2 million pounds of poultry per week would reduce cost to small live poultry dealers, but the benefits of the rule would also be less. AMS prefers §§ 201.100 and 201.214 as it proposed them because it considers the information in the disclosures to be important for poultry growers for making investment and production decisions and necessary for the efficient functioning of the market.

AMS made considerations for small live poultry dealers in drafting proposed §§ 201.100 and 201.214. Proposed § 201.100 makes several exemptions for live poultry dealers producing less than 2 million pounds of poultry per week. Many of the smallest live poultry dealers that do not participate in tournament style contracts would be unaffected by proposed § 201.214.

Although cost would be smaller with the alternative, the costs associated with proposed §§ 201.100 and 201.214 are relatively small. The rule seeks only to require live poultry dealers to provide its contract growers with information relevant to their operations, and AMS made every effort to limit the disclosures to information that live poultry dealer already possessed. While proposed §§ 201.100 and 201.214 would have an effect on a substantial number (54) of small businesses, the economic impact would be significant for only few, if any, live poultry dealers.

Costs to growers would be limited to the time required to review and acknowledge receipt of the disclosures. AMS expects that proposed §§ 201.100 and 201.214 would have effects on a substantial number of growers however, the costs would not be significant for any of them. Because AMS does not regulate poultry growers, AMS does not have information regarding the business sizes of poultry growers similar to the information it has concerning live poultry dealers. AMS invites comments concerning the sizes of poultry growing businesses and whether the costs associated with proposed §§ 201.100 and 201.214 would have a significant effect on any of them. Based on the above analyses regarding proposed §§ 201.100 and 201.214, this proposed rule is not expected to have a significant economic impact on a substantial number of small business entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). While confident in this assertion, AMS acknowledges that individual businesses may have relevant data to supplement our analysis. We would encourage small stakeholders to submit any relevant data during the comment period.

VII. Request for Comments

AMS invites comments on this proposed rule. Comments must be submitted through the e-rulemaking portal at *www.regulations.gov.* Comments submitted on or before August 8, 2022 will be considered. Comments should reference Docket No. AMS–FTPP–21–0044 and the date and page number of this issue of the **Federal Register**.

List of Subjects in 9 CFR Part 201

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

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

PART 201—ADMINISTERING THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for 9 CFR part 201 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

■ 2. Revise § 201.2 to read as follows:

§ 201.2 Terms defined.

The definitions of terms contained in the Act shall apply to such terms when used in Administering the Packers and Stockyards Act, 9 CFR part 201; Rules of Practice Governing Proceedings Under the Packers and Stockyards Act, 9 CFR part 202; and Statements of General Policy Under the Packers and Stockyards Act, 9 CFR part 203. In addition, the following terms used in these parts shall be construed to mean:

Act means the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 *et seq.*).

Additional capital investment means a combined amount of $12,500 or more per structure paid by a poultry grower or swine production contract grower over the life of the poultry growing arrangement or swine production contract beyond the initial investment for facilities used to grow, raise, and care for poultry or swine. Such term includes the total cost of upgrades to the structure, upgrades of equipment located in and around each structure, and goods and professional services that are directly attributable to the additional capital investment. The term does not include costs of maintenance or repair.

Administrator or *agency head* means the Administrator of the Agricultural Marketing Service or any person authorized to act for the Administrator.

Agency means the Agricultural Marketing Service of the United States Department of Agriculture.

Breeder facility identifier means the identification that a live poultry dealer permanently assigns to distinguish among breeder facilities supplying eggs for the poultry placed at the poultry grower's facility.

Breeder flock age means the age in weeks of the egg-laying flock that is the source of poultry placed at the poultry grower's facility.

Commerce means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia.

Complex means a group of local facilities under the common management of a live poultry dealer. A complex may include, but not be limited to, one or more hatcheries, feed mills, slaughtering facilities, or poultry processing facilities.

Custom feedlot means any facility which is used in its entirety or in part for the purpose of feeding livestock for the accounts of others, but does not include feeding incidental to the sale or transportation of livestock.

Department means the United States Department of Agriculture.

Grower variable costs means those costs related to poultry production that may be borne by the poultry grower, including, but not limited to, utilities, fuel, water, labor, repairs and maintenance, and liability insurance.

Growout means the process of raising and caring for livestock or poultry in anticipation of slaughter.

Growout period means the period of time between placement of livestock or poultry at a grower's facility and the harvest or delivery of such animals for slaughter, during which the feeding and care of such livestock or poultry are under the control of the grower.

Housing specifications means a description of—or a document relating to—a list of equipment, products, systems, and other technical poultry housing components required by a live poultry dealer for the production of live poultry.

Inputs means the various contributions to be made by the live poultry dealer and the poultry grower as agreed upon by both under a poultry growing arrangement. Such inputs may include, but are not limited to, animals, feed, veterinary services, medicines, labor, utilities, and fuel.

Live poultry dealer means any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another, if poultry is obtained by such person in commerce, or if poultry obtained by such person is sold or shipped in commerce, or if poultry products from poultry obtained by such person are sold or shipped in commerce.

Letter of intent means a document that expresses a preliminary commitment from a live poultry dealer to engage in a business relationship with a prospective poultry grower and that includes the chief terms of the agreement.

Live Poultry Dealer Disclosure Document means the complete set of disclosures and statements that the live poultry dealer must provide to the poultry grower.

Minimum number of placements means the least number of flocks of poultry the live poultry dealer will deliver to the grower for growout annually under the terms of the poultry growing arrangement.

Minimum stocking density means the ratio that reflects the minimum weight of poultry per facility square foot the live poultry dealer intends to harvest from the grower following each growout.

Number of placements means the number of flocks of poultry the live poultry dealer will deliver to the grower for growout during each year of the poultry growing arrangement period.

Original capital investment means the initial financial investment for facilities used to grow, raise, and care for poultry or swine.

Packers and Stockyards Division (PSD) means the Packers and Stockyards Division of the Fair Trade Practices Program (FTPP), Agricultural Marketing Service.

Person means individuals, partnerships, corporations, and associations.

Placement means delivery of a poultry flock to the poultry grower for growout in accordance with the terms of a poultry growing arrangement.

Poultry grower means any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such person or by another, but not an employee of the owner of such poultry.

Poultry grower ranking system means a system where the contract between the live poultry dealer and the poultry grower provides for payment to the poultry grower based upon a grouping, ranking, or comparison of poultry growers delivering poultry during a specified period.

Poultry growing arrangement means any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another's instructions, for slaughter.

Principal part of performance means the raising of and caring for livestock or poultry, when used in connection with a livestock or poultry production contract.

Prospective poultry grower means a person or entity with whom the live poultry dealer is considering entering into a poultry growing arrangement.

Regional director means the regional director of the Packers and Stockyards Division (PSD) for a given region or any

person authorized to act for the regional director.

Registrant means any person registered pursuant to the provisions of the Act and the regulations in this part.

Schedule means a tariff of rates and charges filed by stockyard owners and market agencies.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department authorized to act for the Secretary.

Stocking density means the ratio that reflects the number of birds in a placement, expressed as the number of poultry per facility square foot.

Stockyard means a livestock market which has received notice under section 302(b) of the Act that it has been determined by the Secretary to come within the definition of ''stockyard'' under section 302(a) of the Act.

3. Amend § 201.100 by,

a. Revising the heading and paragraph (a);

b. Redesignating paragraphs (b) through (e) as paragraphs (h) through (k), respectively;

c. Removing paragraph (f);

d. Redesignating paragraphs (g) and (h) as paragraphs (l) and (m), respectively;

e. Adding new paragraphs (b) through (g);

f. Revising redesignated paragraph (h) introductory paragraph; and

g. Redesignating paragraphs (i)(2) and (3) as paragraphs (i)(3) and (4) and adding new paragraph (i)(2).

The revisions and additions to read as follows:

§ 201.100 Disclosures and records to be furnished poultry growers and sellers.

(a) *Obligation to furnish information and documents.* A live poultry dealer must provide the documents described in this paragraph (a) to a prospective or current poultry grower.

(1) Except as provided in paragraph (e) of this section, when a live poultry dealer seeks to renew, revise, or replace an existing poultry growing arrangement, or to establish a new 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, replacement, or new poultry growing arrangement; and

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

(2) When a live poultry dealer seeks to enter a poultry growing arrangement with a poultry grower or prospective poultry grower that will require an original capital investment, the live poultry dealer must provide the following to the poultry grower or prospective 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), (c), and (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 poultry grower or prospective poultry grower to make an additional capital investment, the live poultry dealer must provide the following to the poultry grower or prospective 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), (c), and (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 followed by additional disclosures as required in paragraphs (c) and (d) of this section. The order, form, and content of the cover page 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, email address, and, if applicable, primary internet web page 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 the poultry company places 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. Please carefully review the information in this document.''

(5) The following:

(i) The minimum number of placements on the poultry grower's farm annually under the terms of the poultry growing arrangement, and

(ii) The minimum stocking density for each flock to be placed on the poultry grower's farm 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. At least seven calendar days before the live poultry dealer executes the poultry growing arrangement, the poultry company is required to provide you with: (1) this disclosure document, and (2) a copy of 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) any 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: ''Even if the poultry growing arrangement contains a confidentiality provision, by law you still retain 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 your immediate family or business associates. 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. If this disclosure by the live poultry dealer 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, in the Live Poultry Dealer Disclosure Document following the cover page, the following information:

(1) A summary of litigation over the prior six years between the live poultry dealer and any poultry grower;

including the nature of the litigation, 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 facility or assignment of the poultry growing arrangement to another party, including the circumstances under which the live poultry dealer will offer the successive buyer a poultry growing agreement.

(d) *Financial Disclosures.* The live poultry dealer must include in the Live Poultry Dealer Disclosure Document the following information:

(1) A table showing average annual gross payments to poultry growers for the previous calendar year for all complexes owned or operated by the live poultry dealer, organized by housing specification, and expressing average payments on the basis of U.S. dollars per farm facility square foot.

(2) Tables showing average annual gross payments to poultry growers at the local complex for each of the five previous years. The tables should express average payments on the basis of U.S. dollars per farm facility square foot. The tables should be organized by year, housing specification tier (lowest to highest), and quintile (lowest to highest). The step-by-step process for calculating table values is:

(i) Group growers according to the housing specification affiliated with their poultry growing arrangement;

(A) Include all growers under contract for a complete calendar year and growers under flock-to-flock poultry growing arrangements during that year, and

(B) Exclude growers whose housing specifications changed during the calendar year from the calculation for that year.

(ii) Sum all payments to each grower during the calendar year to determine each grower's total annual payments;

(iii) Divide each grower's total annual payments by the square footage of the grower's farm facility to normalize annual payments to reflect dollars per farm facility square foot;

(iv) Sort normalized annual payments into quintiles (smallest to largest); and

(v) Sum all normalized annual payments within each quintile and divide the result by the number of growers in the quintile to determine an average annual gross payment to poultry growers for that quintile.

(3) If poultry housing specifications for poultry growers under contract with the complex are modified such that an additional capital investment may be required, or if the five-year averages provided under paragraph (2) do not accurately represent projected grower gross annual payments under the terms of the applicable poultry growing arrangement for any reason, the live poultry dealer must provide the following additional information:

(i) Tables providing projections of average annual gross payments to growers under contract with the complex with the same housing specifications for the term of the poultry growing arrangement at five quintile levels expressed as dollars per farm facility square foot, and

(ii) An explanation of why the annual gross payment averages for the previous five years, as provided under (2), do not provide an accurate representation of projected future payments, including the basic assumptions underlying the projections provided under (i) of this paragraph.

(4) A summary of information the live poultry dealer collects or maintains relating to grower variable costs inherent in poultry production.

(5) 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, including all parent and subsidiary companies, slaughtering fewer than 2 million live pounds of poultry weekly (104 million pounds annually) is exempt from the requirements in paragraph (a)(1) of this section.

(f) *Governance and Certification.*

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

(i) audit the accuracy and completeness of the disclosures required under (a), which shall include audits and testing, and which shall include reviews of an appropriate sampling of Live Poultry Dealer 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 Live Poultry Dealer Disclosure Document does not contain any untrue statement of a material fact or omit to state a material fact which would render it 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 (including any discrepancy with other oral or written statements made in connection with the poultry growing arrangement), 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 or prospective 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 poultry grower or prospective poultry grower and must retain a copy of the dated signature page in the dealer's records for three years following expiration, termination, or non-renewal of the poultry growing arrangement.

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

* * * * *

(i) * * *

(2) The following variables controlled by the live poultry dealer:

(i) The minimum number of placements of poultry at the poultry grower's facility annually, and

(ii) The minimum stocking density for each flock placed with the poultry grower under the poultry growing arrangement.

* * * * *

■ 4. In subpart N, add § 201.214 to read as follows:

§ 201.214 Transparency in poultry grower ranking pay systems.

(a) *Poultry grower ranking system records.* If a live poultry dealer uses a poultry grower ranking system to calculate grower payments, the live poultry dealer must produce records in accordance with paragraphs (b) and (c) of this section. The live poultry dealer must maintain such records for a period of five years.

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

(1) The stocking density of the placement;

(2) Names and all ratios of breeds of the poultry delivered;

(3) If the live poultry dealer has determined the sex of the birds, all ratios of male and female poultry delivered;

(4) The breeder facility identifier;

(5) The breeder flock age;

(6) Information regarding any known health impairments of the breeder flock or of the poultry delivered; and

(7) Adjustments, if any, that the live poultry dealer may make to the calculation of the grower's pay based on the inputs in (1) through (6) of this paragraph.

(c) *Poultry grower ranking system settlement documents.* A live poultry dealer must provide ranking system settlement documents that include the following information:

(1) *Grouping, ranking, or comparison sheets.* The live poultry dealer must 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, ranking, or comparison sheet for that period. The grouping or ranking sheet need not show the names of other growers, but must show their housing specification and the actual figures upon which the grouping or ranking is based for each grower grouped or ranked during the specified period.

(2) *Distribution of inputs.* The distribution of inputs among participants must be reported to all poultry grower ranking system participants. 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) The stocking density for each placement;

(ii) The names and all ratios of breeds of the poultry delivered to each poultry grower's facility;

(iii) If the live poultry dealer has determined the sex of the birds, all ratios of male and female poultry delivered to each poultry grower's facility;

(iv) All breeder facility identifiers;

(v) The breeder flock age(s); and

(vi) The number of feed disruptions each poultry grower endured during the growout period, where the grower was completely out of feed for 12 hours or more.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1. Details of the Estimated One-Time, First-Year Costs and On-Going Annual Costs of Providing Disclosure Documents Required in Proposed §§ 201.100 and 201.214 Under the Preferred Alternative

Table 1 below provides the details of the estimated one-time, first-year costs of providing disclosure documents required in proposed § 201.100. AMS expects that the direct costs will consist entirely of the value of the time required to produce and distribute the disclosures and maintain proper records. The number of hours the second column were provided by AMS subject matter experts. These experts were auditors and supervisors with many years of experience in auditing live poultry dealers for compliance with the Packers and Stockyards Act. They provided estimates of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. Estimates for the value of the time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimated released May 2020. Wage estimates are marked up 41.56 percent to account for benefits. The ''Adjustment'' column allows for estimation of costs that will only apply to a subset of the poultry growers or to the live poultry dealers. A blank value in the Adjustment column indicates that no adjustments were made to the costs. Each adjustment is different and described in the relevant footnote. Expected costs for each ''Regulatory Requirement'' and are listed in the ''Expected Cost'' column. Summing the values in the ''Expected Cost'' column provides the total expected first-year, one-time costs for setting-up and producing the disclosure documents associated with proposed § 201.100.

TABLE 1—EXPECTED FIRST-YEAR DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.100

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage ($)	Number of LPD*s*	Adjustment (percent)	Expected cost ($)
201.100(b)(1)–(8)	1	Manager	93	89		8,295
	4	Lawyer	114	89		40,513
201.100(c)(1)–(3)	10	Manager	93	89		82,951
	5	Administrative	40	89		17,664
	10	Lawyer	114	89		101,282
201.100(d)(1)(2)(i)	30	Manager	93	[1] 42	[2] 90	105,692
	8	Administrative	40	[1] 42	[2] 90	12,003
	22	Information Tech	83	[1] 42	[2] 90	68,608
201.100(d)(1)(2)(ii)–(v)	30	Manager	93	89	[3] 5	12,443
	8	Administrative	40	89	[3] 5	1,413
	22	Information Tech	83	89	[3] 5	8,077
201.100(d)(1)(2)(vi)	30	Manager	93	89	[4] 5	12,443
	8	Administrative	40	89	[4] 5	1,413
	22	Information Tech	83	89	[4] 5	8,077
201.100(d)(3)	20	Manager	93	89	[5] 5	8,295
	5	Administrative	40	89	[5] 5	883
	15	Information Tech	83	89	[5] 5	5,507
201.100(d)(4)	6	Manager	93	89		49,770
	2	Administrative	40	89		7,065
201.100(d)(5)	0.5	Manager	93	89		4,148
	0.5	Administrative	40	89		1,766
201.100(f)(1)(2)	40	Manager	93	89		331,803

TABLE 1—EXPECTED FIRST-YEAR DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.100—Continued

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage ($)	Number of LPDs	Adjustment (percent)	Expected cost ($)
	20	Lawyer	114	89		202,564
	10	Administrative	40	89		35,327
	10	Information Tech	83	89		73,426
201.100(g)(1)(2)	1	Manager	93	89		8,295
	1	Administrative	40	89		3,533
201.100(i)(2)	1	Manager	93	89		8,295
	1	Lawyer	114	89		10,128
Total Cost						1,231,679

[1] 201.100(d)(1)(i) exempts live poultry dealers that process less than 2 million pounds of poultry per week.
[2] Reduces estimated costs by 10 percent to exclude the 5 percent for the estimated proportion of growers that require upgrades to poultry housing and 5 percent for the estimated proportion of growers that enter a contract for the first time.
[3] Estimates costs for the 5 percent of the growers that require upgrades to poultry housing.
[4] Estimates costs for only the 5 percent of growers that that enter contract for the first time.
[5] Estimates costs for the 5 percent of the growers that require upgrades to poultry housing.

Table 2 provides the details of the estimated ongoing costs of providing disclosure documents required in proposed § 201.100. Table 2 is laid out the same as Table 1. AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. Estimates for the value of the time are from U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2020. Wage estimates are marked up 41.56 percent to account for benefits. The ''Adjustment'' column allows for estimation of costs that will only apply to a subset of the poultry growers or to the live poultry dealers. Expected costs for each ''Regulatory Requirement'' and are listed in the ''Expected Cost'' column. Summing the values in the ''Expected Cost'' column provides the total expected costs for producing and distributing the disclosure documents associated with proposed § 201.100 on an ongoing basis.

TABLE 2—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.100

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage ($)	Number of LPDs/number of contracts	Adjustment (percent)	Expected cost ($)
201.100(A)(a1)	0.08	Evenly distributed among management, administrative, and information tech.	[1] 71.80	22,312	[2] 74.72	99,750
201.100(A)(a2)	0.08	Evenly distributed among management, administrative, and information tech.	[1] 71.80	23,047	[3] 5	6,895
201.100(A)(a3)	0.08	Evenly distributed among management, administrative, and information tech.	[1] 71.80	23,047	[4] 5	6,895
201.100(b)(1)–(8)	0.5	Manager	93.20	89		4,148
	0.5	Administrative	39.69	89		1,766
201.100(c)(1)–(3)	1	Manager	93.20	89		8,295
	1	Administrative	39.69	89		3,533
	1	Lawyer	113.80	89		10,128
201.100(d)(1)(2)(i)	15	Manager	93.20	[5] 42	[6] 90	52,846
	3	Administrative	39.69	[5] 42	[6] 90	4,501
	6	Information Tech	82.50	[5] 42	[6] 90	18,711
201.100(d)(1)(2)(ii)–(v)	15	Manager	93.20	89	[7] 5	6,221
	3	Administrative	39.69	89	[7] 5	530
	6	Information Tech	82.50	89	[7] 5	2,203
201.100(d)(1)(2)(vi)	15	Manager	93.20	89	[8] 5	6,221
	3	Administrative	39.69	89	[8] 5	530
	6	Information Tech	82.50	89	[8] 5	2,203
201.100(d)(3)	10	Manager	93.20	89	[9] 5	4,148
	2	Administrative	39.69	89	[9] 5	353
	4	Information Tech	82.50	89	[9] 5	1,469
201.100(d)(4)	0.25	Manager	93.20	89		2,074
	0.25	Administrative	39.69	89		883
201.100(d)(5)	0.25	Manager	93.20	89		2,074
	0.25	Administrative	39.69	89		883

TABLE 2—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.100—Continued

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage ($)	Number of LPDs/number of contracts	Adjustment (percent)	Expected cost ($)
201.100(f)(1)(2)	20	Manager	93.20	89		165,902
	5	Lawyer	113.80	89		50,641
	3	Administrative	39.69	89		10,598
	4	Information Tech	82.50	89		29,370
Total Cost						503,771

[1] $71.80 is the average of the average wages for poultry processing managers, administrative professionals, and information technology staff at $93.20, $39.69, and $82.50 respectively.
[2] 74.72 is the percentage of the existing poultry grower contracts that are expected to come up for renewal each year. It includes all flock-to-flock and single year contracts as well as longer term contracts that are expected to expire within a year.
[3] Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.
[4] Estimates costs for only the 5 percent of growers that that enter contract for the first time.
[5] 201.100(d)(1)(i) exempts live poultry dealers that process less than 2 million pounds of poultry per week.
[6] Reduces estimated cost by 10 percent to exclude the 5 percent for the estimated proportion of growers that require upgrades to poultry housing and 5 percent for the estimated proportion of growers that enter a contract for the first time.
[7] Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.
[8] Estimates costs for only the 5 percent of growers that that enter contract for the first time.
[9] Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.

Table 3 below provides the details of the estimated one-time, first-year costs of providing disclosure documents required in proposed § 201.214. Like the previous tables, AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. Values in the ''Expected Wage'' column are taken from U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2020. Wage estimates are marked up 41.56 percent to account for benefits. The number of LPD*s* is the number of live poultry dealers that filed annual reports with AMS for their 2020 fiscal years. ''Expected Cost'' is the estimate of the cost of each ''Regulatory Requirement.'' Summing the ''Expected Cost'' column provides the total expected first-year, one-time costs for setting-up and producing the disclosure documents associated with proposed § 201.214.

TABLE 3—ONE TIME FIRST-YEAR COSTS ASSOCIATED WITH PROPOSED § 201.214

Regulatory requirement	Number of hours per LPD	Profession	Expected wage ($)	Number of LPDs	Expected cost ($)
201.214(a)	2	Manager	93.20	89	16,590
	4	Administrative	39.69	89	14,131
	2	Information Technology	82.50	89	14,685
201.214(b)	5	Manager	93.20	89	41,475
	2	Administrative	39.69	89	7,065
	18	Information Technology	82.50	89	132,167
201.214(c)	8	Manager	93.20	89	66,361
	5	Administrative	39.69	89	17,664
	22	Information Technology	82.50	89	161,537
Total Cost					471,675

Table 3 below provides the details of the estimated ongoing costs of providing disclosure documents required in proposed § 201.214. AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. They also provided the expected number of tournaments per plant. The number of poultry processing plants was tallied from the annual reports that live poultry dealers file with AMS. Values in the ''Expected Wage'' column were found in U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2020. Wage estimates are marked up 41.56 percent to account for benefits. Multiplying across the row provides the ''Cost'' for each ''Regulatory Requirement,'' and summing the ''Cost'' column provides the total expected costs for producing and distributing the disclosure documents associated with proposed § 201.214 on an ongoing basis.

TABLE 4—ONGOING EXPECTED COSTS ASSOCIATED WITH PROPOSED § 201.214

Regulatory requirement	Hours	Profession	Number of plants	Number of tournaments per plant	Weeks in a year	Avg. wage ($)	Cost ($)
201.214(b)	0.1	Evenly distributed among management, administrative, and information tech.	228	1.35	52	[1] 71.80	114,919

TABLE 4—ONGOING EXPECTED COSTS ASSOCIATED WITH PROPOSED § 201.214—Continued

Regulatory requirement	Hours	Profession	Number of plants	Number of tournaments per plant	Weeks in a year	Avg. wage ($)	Cost ($)
201.214(c)	0.1	Evenly distributed among management, administrative, and information tech.	228	1.35	52	[1] 71.80	114,919
Total Cost.	.....	.....	.....	.....	.....	.....	229,838

[1] $71.80 is the average of the average wages for poultry processing managers, administrative professionals, and information technology staff at $93.20, $39.69, and $82.50 respectively.

Appendix 2. Technical Overview of Estimates of the Economic Benefits of Reduction in Profit Uncertainty to Contract Growers With Rule Changes Promoting Greater Transparency in Returns

A potential benefit of the contract disclosure rules providing increased transparency would be that doing so could lower the uncertainty in the contract grower's profit stream. According to economic principles, a risk averse producer will benefit economically from a reduction in profit risk, a component of the proposed rule's benefits, discussed above.

Given assumptions about the level of risk aversion of the producer, the distribution of contract grower profit, and the grower's utility function (an economic concept that in this case measures the grower's preferences over a set of goods), it is possible to calculate the range of economic benefits to contract growers of decreased profit uncertainty associated with greater transparency. For this analysis, we assume that the producer maximizes an absolute risk aversion (ARA) utility function. The alternative to an absolute risk aversion (RRA) function is a relative risk aversion function. For the former, the coefficient of risk aversion is the negative of the ratio of the second to first derivatives of the utility function with respect to the good (*e.g.,* wealth or consumption) while the latter multiples this ratio times the level of the good. We could find only two papers that used either RRA or ARA for examining North American poultry contract growers. Hu (2015) and Hegde and Vukina (2003) assume CARA for U.S. broiler contract growers. The former is an econometric exercise that does not provide sufficient information to obtain a risk aversion parameter for use in a scenario analysis and the latter is simply a simulation exercise of a wide range of arbitrary parameter values for the absolute risk aversion parameters without referring them to a given range of risk aversion premium (RAP) levels to provide context.

A benefit of relative risk aversion is that the relative risk aversion parameter is scale free, which represents a convenience for analysis. We assume that one reason for the greater use of relative risk aversion compared to absolute risk aversion is that it saves the researcher the work of having to solve the nonlinear equations necessary to scale the risk parameters to the size of the risky bet. A nice property of the absolute risk aversion is that the preferences for risk aversion are directly reflective of where the researcher wants risk preferences to be on a 0%–100% percentage of the standard deviation of the gamble that a risk averter would pay to avoid the gamble altogether. With relative risk aversion in contrast, the researcher instead refers to say, ''typical'' values of the relative risk aversion coefficient. Relative risk aversion measure is sensitive to what is included or excluded when defining or measuring the outcome variable, *e.g.,* whether wealth or profits (Meyer and Meyer, 2005). When the focus is on representing and measuring the risk preferences of the decision maker, as it is in the analysis of poultry growers, either relative or absolute risk aversion is sufficient as the basis for the analysis, and since simple arithmetic allows one to go from model to the other, only one of these approaches is needed (ibid.).

Another decision to be made is how the producer's risk aversion changes with wealth. Under constant absolute risk aversion (CARA), the grower's risk aversion does not change as wealth increases. Decreasing absolute risk aversion (DARA) assumes that the grower's risk aversion increases as wealth increases. Another possibility is that the grower's risk aversion is increasing in wealth (IARA). While no evidence exists one way or another for the how risk preferences of poultry contract growers change with wealth, the agricultural economics literature generally assumes DARA over IARA. We have no information one way or another on how the risk aversion of contract growers changes with wealth, and hence, we use both CARA and DARA.

First, we assume that the grower has constant absolute risk aversion (CARA) and makes management decisions to maximize the expected value of a negative exponential utility function over N simulated returns, or

$$U(w) = (1 - e^{-\lambda w})$$

where λ is the grower's absolute risk aversion coefficient and w is the grower's wealth that proxies for a set of goods and services. The higher is λ, the higher the grower's aversion variability in w. Wealth w is a stochastic variable defined as the grower's initial (fixed) wealth w_0 plus the stochastic net returns. A negative exponential utility function conforms to the hypothesis that growers prefer less risk to more given the same expected, or average, return.

The specific functional form in the equation above also assumes that growers view the riskiness of profit variability the same without regard for their level of wealth, *i.e.,* CARA (*e.g.,* Goodwin, 2009). A risk averse grower will be willing to accept lower mean net returns in exchange for lower variability in returns w. Let U_0 be the grower's current utility and U_1 be the grower's utility with the new contract rules and their associated lower variability of w. Assuming mean w is constant between states, for the risk averse grower, $U_1 > U_0$. The question then becomes how to translate the benefit $U_1 - U_0$ into a dollar value. We define the Risk Premium (*RP*), or the dollar benefit to growers of decreased profit risk, as the amount of mean profit they would be willing to give up such that $U_1 = U_0$, *i.e.,* such that they are indifferent between the two states (*e.g.,* Sproul *et al.* 2013; Schnitkey *et al.,* 2003).[117]

The first step is to construct an empirical distribution of poultry grower profit or net revenue. Without much loss in generality for this exercise, broilers and turkey production are aggregated together. The market value of contracted share of broilers and turkey in 2020 was $24.5 billion given NASS data on their total value of production and the 96.3 and 69.5 percent shares, respectively, that are contract. Eleven percent of this value goes to contract growers, based on the ratio of the USDA's Livestock Indemnity Program (LIP) payment rate for contract growers divided by the rate for livestock owners, leading to a mean gross revenue of $2.7 billion for broiler and turkey growers. Variable and fixed costs are assumed to be non-stochastic and are set at 24 and 19 percent of the 2020 mean gross revenue, based on the proportions from Table 1 in Maples *et al.* (2020), and net revenue is the gross revenue less the variable and fixed costs. Initial (non-stochastic) wealth w_0 is set equal to 2020 mean net revenue.[118] Grower net revenue is assumed to follow a normal distribution. A normal distribution of net revenue will approximate the distribution in

[117] This Risk Premium may be considered a special case of the compensating variation concept in economics. With the proposed rule changes leading to greater transparency in returns, the grower would be getting a decrease in revenue variability but would not have to pay to get this. Hence the Risk Premium is a measure of benefit to the grower of being under the new contract rules.

[118] The academic literature tends to be vague as to setting w_0, with it either set at $0 or some unspecified amount. In principle, it could be set at the producer's net equity going into the year, but if one wants initial wealth for the proposes of utility analysis to be relative liquid assets, net equity maybe too high a value.

cumulative distribution function of net revenue in Figure 1 of Maples et al. (2020) with a coefficient of variation of revenue of 0.16.[119] Given this estimate of the coefficient of variation of net revenue, and the mean net revenue of $1.56 billion for broiler and turkey contract grower net revenue, the standard deviation can be simply found as the coefficient of variation of net revenue times this mean.

The associated absolute risk aversion coefficient λ is associated with a grower's risk aversion premium (RAP), a value that varies between 0 and 100 percent (of the potential loss) and reflects the amount the grower is willing to pay to avoid the potential loss, with higher values reflecting higher risk aversion. The λ is linked to the RAP on a theoretical basis outlined in Babcock, Choi, and Feinerman (1993). The associated absolute risk aversion coefficient λ is scaled to the standard deviation of net revenue using the approach in Babcock, Choi, and Feinerman (1993). Note that since λ is scaled to the standard deviation of net revenue, the calculation of the total Risk Premium across all growers, or $RP = \Sigma_i RP_i$, $i = 1 \ldots, G$ equal size growers is invariant to assumptions about the total number of growers *G,* whether set to an arbitrary value or to the 16,524 contract poultry growers per the 2017 Agricultural Census. The estimated value of λ is 9.66E–10, 9.66E–07, and 9.37E–07 for *G*=1, 1,000, and 10,000 equal sized growers, respectively, with an RAP of 20 percent.[120] A von Neumann-Morgenstern expected utility is estimated over N = 1,000 draws of w_j where EU_0 is

$$EU_0(w) = \frac{1}{N}\sum_{j=1}^{N}\left[1 - e^{-\lambda w_j}\right],$$

and EU_1 is

$$EU_1(w_1) = \frac{1}{N}\sum_{j=1}^{N}\left[1 - e^{-\lambda\left(w_{1j} - RP\right)}\right],$$

where w_{1j} are draws from the normal distribution given an assumption for a lower coefficient of variation of gross revenue with the new rules, but with the same initial wealth, costs, and mean gross revenue as in the base case. The risk premium *RP* that solves $EU_1(w_1) = EU_0(w)$ is found using a numerical search routine.

For the DARA scenario, we follow Hennessy (1998), and the CARA utility function becomes

$U(w) = (1 - e^{-\lambda w}) + \beta w$

where β is greater than zero. Let ρ(*w*) be the risk aversion coefficient under DARA, *i.e.,* ρ(w) is decreasing in *w.* Hennessy (ibid.) shows that ρ(*w*) is a function of λ and β as

$$\rho(w) = \frac{\lambda_1^2 e^{-w\lambda_1}}{\beta + \lambda_1 e^{-w\lambda_1}}$$

Per Hennessy (ibid.), we solve for the values of λ and β to simultaneously satisfy a ρ(*w=0*) associated with a RAP of 40 percent and a ρ($w=\bar{w}$) associated with a RAP of 20 percent. Like Hennessy (ibid.), we assume that the Babcock, Choi, and Feinerman approach to relate the risk coefficient to the RAP level holds approximately for DARA preferences. The rest of the approach for finding the risk premium *RP* that solves $EU_1(w_1) = EU_0(w)$ is the same as for the CARA scenarios. Appendix Table A1 summarizes the parameters and risk attitudes used in the analysis, with the RAP value denoted as *θ*.

APPENDIX TABLE A1—NATURE OF CHOSEN UTILITY FUNCTIONS

Parameters and risk attitudes	Low and CARA	High and CARA	DARA
λ	9.37259E–06	2.05321E–05	2.0533761e–05
β	0	0	3.9580000e–09
θ[w = 0]	0.20	0.40	0.40
θ[$w = \bar{w}$]	0.20	0.40	0.20
ρ[w = 0]	9.37259E–06	2.05321E–05	2.0529804e–05
ρ[$w = \bar{w}$]	9.37259E–06	2.05321E–05	9.3707108e–06

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[119] To put this coefficient of variation of broiler revenue of 0.16 in perspective, note that the lower-end estimate of the coefficient of variation of farm level revenue for major row crops is considerably higher one might expect, at 0.25 even with crop insurance (Cooper 2010; Belasco, Cooper, and Smith, 2019).

[120] For estimation, G = 10,000 is used to allow for a larger λ and reduce the potential for machine error in rounding.

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Appendix 3. Details of the Estimated One-Time, First-Year Costs and On-Going Annual Costs of Providing Disclosure Documents Required in Proposed §§ 201.100 and 201.214 Under the Small Business Exemption Alternative

Costs for the alternative that would exempt live poultry dealers that produced and average of less than 2 million pounds of poultry per week were estimated similarly to cost for the proposed §§ 201.100 and 201.214. AMS subject matter experts provided estimates of the average amount of time that would be necessary for each live to comply with each new requirements in §§ 201.100 and 201.214 and the hours were multiplied by wage estimates to arrive at an expected cost for each regulatory element. The tables are set up the same as before. Multiplying across row for each regulatory element provides the expected aggregate cost for the element. Summing the expected costs for element provides the total industry cost.

Table 1 below provides the details of the estimated one-time, first-year costs of providing disclosure documents required in proposed § 201.100. AMS expects that the direct costs will consist entirely of the value of the time required to produce and distribute the disclosures and maintain proper records. The number of hours the second column were provided by AMS subject matter experts. These experts were auditors and supervisors with many years of experience in auditing live poultry dealers for compliance with the Packers and Stockyards Act. They provided estimates of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. Estimates for the value of the time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimates released May 2020. The wage estimates are marked up 41.56 percent to account for benefits. The ''Adjustment'' column allows for estimation of costs that will only apply to a subset of the poultry growers or to the live poultry dealers. A blank value in the Adjustment column indicates that no adjustments were made to the costs. Each adjustment is different and described in the relevant footnote. Expected costs for each ''Regulatory Requirement'' and are listed in the ''Expected Cost'' column. Summing the values in the ''Expected Cost'' column provides the total expected first-year, one-time costs for setting-up and producing the disclosure documents associated with proposed § 201.100.

TABLE 1—EXPECTED FIRST-YEAR DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.100

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage ($)	Number of LPDs [1]	Adjustment (percent)	Expected cost ($)
201.100(b)(1)–(8)	1	Manager	93	42		3,915
	4	Lawyer	114	42		19,118
201.100(c)(1)–(3)	10	Manager	93	42		39,145
	5	Administrative	40	42		8,336
	10	Lawyer	114	42		47,796
201.100(d)(1)(2)(i)	30	Manager	93	42	[2] 90	105,692
	8	Administrative	40	42	[2] 90	12,003
	22	Information Tech	83	42	[2] 90	68,608
201.100(d)(1)(2)(ii)–(v)	60	Manager	93	42	[3] 5	11,744
	16	Administrative	40	42	[3] 5	1,334
	44	Information Tech	83	42	[3] 5	7,624
201.100(d)(3)	20	Manager	93	42	[4] 5	3,915
	5	Administrative	40	42	[4] 5	417
	15	Information Tech	83	42	[4] 5	2,599
201.100(d)(4)	6	Manager	93	42		23,487
	2	Administrative	40	42		3,334
201.100(d)(5)	0.5	Manager	93	42		1,957
	0.5	Administrative	40	42		834
201.100(f)(1)(2)	40	Manager	93	42		156,581
	20	Lawyer	114	42		95,592
	10	Administrative	40	42		16,671
	10	Information Tech	83	42		34,650
201.100(g)(1)(2)	1	Manager	93	42		3,915
	1	Administrative	40	42		1,667
201.100(i)(2)	1	Manager	93	42		3,915
	1	Lawyer	114	42		4,780
Total cost						679,627

[1] Annual reports filed by live poultry dealers indicated 42 processed an average of more than 2 million pounds of poultry per week.
[2] Reduces estimated costs by 10 percent to exclude the 5 percent for the estimated proportion of growers that require upgrades to poultry housing and 5 percent for the estimated proportion of growers that enter a contract for the first time.
[3] Estimates costs for the 5 percent of the growers that require upgrades to poultry housing and enter into contracts for the first time.
[4] Estimates costs for the 5 percent of the growers that require upgrades to poultry housing.

Table 2 provides the details of the estimated ongoing costs of providing disclosure documents required in proposed § 201.100. Table 2 is laid out the same as Table 1. AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. Estimates for the value of the time are from U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2020. The wage estimates are marked up 41.56 percent to account for benefits. The ''Adjustment'' column allows for estimation of costs that will only apply to a subset of the poultry growers or to the live poultry dealers. Expected costs for each ''Regulatory Requirement'' and are listed in the ''Expected Cost'' column. Summing the values in the ''Expected Cost'' column provides the total expected costs for producing and distributing

the disclosure documents associated with proposed § 201.100 on an ongoing basis.

TABLE 2—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.100

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage ($)	Number of LPDs/number of contracts	Adjustment (percent)	Expected cost ($)
201.100(A) (a1)	0.08	Evenly distributed among management, administrative, and information tech.	[1] 71.80	22,312	[2] 74.72	99,750
201.100(A)(a2)	0.08	Evenly distributed among management, administrative, and information tech.	[1] 71.80	22,312	[3] 5	6,675
201.100(A)(a3)	0.08	Evenly distributed among management, administrative, and information tech.	[1] 71.80	22,312	[4] 5	6,675
201.100(b)	0.5	Manager	93.20	42		1,957
(1)–(8)	0.5	Administrative	39.69	42		834
201.100(c)(1)–(3)	1	Manager	93.20	42		3,915
	1	Administrative	39.69	42		1,667
	1	Lawyer	113.80	42		4,780
201.100(d)(1)(2)(i)	15	Manager	93.20	42	[5] 90	52,846
	3	Administrative	39.69	42	[5] 90	4,501
	6	Information Tech.	82.50	42	[5] 90	18,711
201.100(d)(1)(2)(ii)–(v).	30	Manager	93.20	42	[6] 5	5,872
	6	Administrative	39.69	42	[6] 5	500
	12	Information Tech.	82.50	42	[6] 5	2,080
201.100(d)(3)	10	Manager	93.20	42	[7] 5	1,957
	2	Administrative	39.69	42	[7] 5	167
	4	Information Tech.	82.50	42	[7] 5	693
201.100(d)(4)	0.25	Manager	93.20	42		979
	0.25	Administrative	39.69	42		417
201.100(d)(5)	0.25	Manager	93.20	42		979
	0.25	Administrative	39.69	42		417
201.100(f)(1)(2)	20	Manager	93.20	42		78,291
	5	Lawyer	113.80	42		23,898
	3	Administrative	39.69	42		5,001
	4	Information Tech.	82.50	42		13,860
Total Cost						337,420

[1] $71.80 is the average of the average wages for poultry processing managers, administrative professionals, and information technology staff at $93.20, $39.69, and $82.50 respectively.
[2] 74.72 is the percentage of the existing poultry grower contracts that are expected to come up for renewal each year. It includes all flock-to-flock and single year contracts as well as longer term contracts that are expected to expire within a year.
[3] Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.
[4] Estimates costs for only the 5 percent of growers that that enter contract for the first time.
[5] Reduces estimated cost by 10 percent to exclude the 5 percent for the estimated proportion of growers that require upgrades to poultry housing and 5 percent for the estimated proportion of growers that enter a contract for the first time.
[6] Estimates cost for the 5 percent of the growers that require upgrades to poultry housing and enter into contracts for the first time.
[7] Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.

Table 3 below provides the details of the estimated one-time, first-year costs of providing disclosure documents required in proposed § 201.214. Like the previous tables, AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. Values in the ''Expected Wage'' column are taken from U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2020. The wage estimates are marked up 41.56 percent to account for benefits. The number of LPD*s* is the number of live poultry dealers that filed annual reports with AMS for their 2020 fiscal years. ''Expected Cost'' is the estimate of the cost of each ''Regulatory Requirement.'' Summing the ''Expected Cost'' column provides the total expected first-year, one-time costs for setting-up and producing the disclosure documents associated with proposed § 201.214.

TABLE 3—ONE TIME FIRST-YEAR COSTS ASSOCIATED WITH PROPOSED § 201.214

Regulatory requirement	Number of hours per LPD	Profession	Expected wage ($)	Number of LPDs	Expected cost ($)
201.214(a)	2	Manager	93.20	42	7,829
	4	Administrative	39.69	42	6,668
	2	Information Technology	82.50	42	6,930
	5	Manager	93.20	42	19,573
201.214(b)	2	Administrative	39.69	42	3,334
	18	Information Technology	82.50	42	62,371

TABLE 3—ONE TIME FIRST-YEAR COSTS ASSOCIATED WITH PROPOSED § 201.214—Continued

Regulatory requirement	Number of hours per LPD	Profession	Expected wage ($)	Number of LPDs	Expected cost ($)
201.214(c)	8	Manager	93.20	42	31,316
	5	Administrative	39.69	42	8,336
	22	Information Technology	82.50	42	7,829
Total Cost					76,231

Table 4 below provides the details of the estimated ongoing costs of providing disclosure documents required in proposed § 201.214. AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. They also provided the expected number of tournaments per plant. The number of poultry processing plants was tallied from the annual reports that live poultry dealers file with AMS. Values in the ''Expected Wage'' column were found in U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2020. The wage estimates are marked up 41.56 percent to account for benefits. Multiplying across the row provides the ''Cost'' for each ''Regulatory Requirement,'' and summing the ''Cost'' column provides the total expected costs for producing and distributing the disclosure documents associated with proposed § 201.214 on an ongoing basis.

TABLE 4—ONGOING EXPECTED COSTS ASSOCIATED WITH PROPOSED § 201.214

Regulatory requirement	Hours	Profession	Number of plants	Number of tournaments per plant	Weeks in a year	Avg. wage ($)	Cost ($)
201.214(b)	0.1	Evenly distributed among management, administrative, and information tech.	108	1.35	52	[1] 71.80	54,231
201.214(c)	0.1	Evenly distributed among management, administrative, and information tech.	108	1.35	52	[1] 71.80	54,231
Total Cost							108,463

[1] $71.80 is the average of the average wages for poultry processing managers, administrative professionals, and information technology staff at $93.20, $39.69, and $82.50 respectively.

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