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## **Agricultural Marketing Service**

### **9 CFR Part 201**

**[Doc. No. AMS-FTPP-22-0046]**

**RIN 0581-AE54**

## **Poultry Grower Payment Systems and Capital Improvement Systems; Delay of Effective Date**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed delay of effective date; request for comments.

**SUMMARY:** The Agricultural Marketing Service (AMS or the Agency) is proposing to delay the effective date of the Poultry Grower Payment Systems and Capital Improvement Systems final rule published in the *Federal Register* on January 16, 2025, to allow time for further consideration of possible actions that may be taken regarding the disposition of the rule. The current effective date is July 1, 2026. AMS is proposing to delay the effective date to December 31, 2027.

**DATES:** Comments on this proposed rule must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments can be submitted through the Federal e-rulemaking portal at <https://www.regulations.gov> and should reference the docket number and the date and page number of this issue of the *Federal Register*. AMS prefers comments be submitted electronically. However, written comments may be submitted (*i.e.*, postmarked) via mail to Docket No. AMS-FTPP-22-0046, Jeana Harbison, Acting Director, Packers and Stockyards Division, USDA, AMS, FTPP Room 2097–S, Mail Stop 3601, 1400 Independence Ave. SW, Washington, DC 20250–3601. All comments submitted in response to this proposed action will be included in the record and will be made available to the public. Please be advised the identity of individuals or entities submitting

comments will be made public on the internet at the address provided above. Parties who wish to comment anonymously may do so by entering “N/A” in the fields identifying the commenter. Comments are posted to regulations.gov as submitted, without change. As required by 5 U.S.C. 553(b)(4), a plain language summary of the proposed rule is also available on the Federal e-rulemaking portal.

**FOR FURTHER INFORMATION CONTACT:** Jeana Harbison, Acting Director, Packers and Stockyards Division, USDA, AMS, Fair Trade Practices Program, 1400 Independence Ave. SW, Washington, DC 20250; telephone: 202-720-7051; email: Jeana.M.Harbison@usda.gov.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On January 16, 2025, AMS published the final rule, “Poultry Grower Payment Systems and Capital Improvement Systems” (Payment Systems rule or final rule) (90 FR 5146, January 16, 2025), to amend 9 CFR part 201 of its regulations under the Packers and Stockyards Act (P&S Act) (7 U.S.C. 181 *et seq.*). The final rule was promulgated in support of Executive Order 14036 (86 FR 36987, July 14, 2021), which Executive Order 14337 revoked on August 13, 2025 (90 FR 40227, August 19, 2025).

The final rule: (1) prohibits livestock poultry dealers (LPDs) from reducing a grower's compensation based on the grower's ranking under a poultry grower ranking system; (2) establishes a presumptive violation of the P&S Act by LPDs when aggregate gross annual payments based upon a grower's ranking under a poultry grower ranking system exceeds a certain threshold; (3) holds LPDs to a duty of fair comparison when designing and operating their poultry grower ranking system and requires documentation of compliance with that duty; and (4) requires LPDs to provide certain disclosures when requesting or requiring that broiler growers make additional capital investments.

At the time of publication, AMS estimated the final rule would result in

significant costs to both LPDs and poultry growers with no quantifiable benefits.<sup>1</sup> AMS acknowledged it could not rule out the possibility of increased compliance costs, fewer growers participating in the market, and/or reduced production efficiencies, all of which could lead to higher consumer prices.<sup>2</sup>

In the explanatory statement accompanying the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026 (Pub. L. 119-37),<sup>3</sup> Congress encouraged the Department to delay implementation of the final rule.<sup>4</sup>

In alignment with Congressional direction, and given the significant estimated costs, and the policy and legal issues associated with the final rule, AMS is seeking public comment on delaying the effective date of the final rule to December 31, 2027, to allow for thorough consideration of these matters.

## **B. Executive Order 12866**

This proposed rule has been determined to be “significant” under Executive Order 12866, as supplemented by Executive Orders 13563 and 14192, and, therefore, has been accordingly reviewed by the Office of Management and Budget (OMB). As a required part of the regulatory process, AMS prepared an economic analysis of the costs and benefits of delaying the effective date of §§ 201.106, 110, 112, and 290.

AMS proposes to delay the effective date of the Payment Systems rule. The Payment Systems rule created four specific provisions including: § 201.106 regarding LPD responsibilities for the design of broiler grower compensation arrangements; §

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<sup>1</sup> See “Poultry Grower Payment Systems and Capital Improvement Systems,” 90 FR 5146, 5196, 5201, January 16, 2025.

<sup>2</sup> See *id.* at 5198-9.

<sup>3</sup> Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, Pub. L. 119-37, 139 Stat. 495 (November 12, 2025).

<sup>4</sup> 171 Cong. Rec. S8047 (daily ed. November 9, 2025) (Explanatory Statement Submitted by Ms. Collins, Chair of the Senate Committee on Appropriations, Regarding H.R. 5371, the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026) (“The agreement encourages the Department to delay implementation of the final rule entitled ‘Poultry Grower Payment Systems and Capital Improvement Systems’, published by the Department of Agriculture in the Federal Register on January 16, 2025 (90 Fed. Reg. 5146 et seq.).”)

201.110 regarding the fair operation of broiler grower ranking systems; § 201.112 regarding disclosure requirements for LPDs when requesting additional capital investments from broiler growers; and § 201.290 regarding severability.

*Reason for the Proposed Rule*

AMS is proposing to delay the effective day of the Payment Systems rule to allow for thorough consideration of estimated costs and the policy and legal issues associated with the final rule.

When AMS finalized the Payment Systems rule, AMS explained there was uncertainty as to whether the benefits would outweigh the costs.<sup>5</sup> One factor that was difficult to determine was whether the provision that prevents LPDs from applying performance discounts (§ 201.106(a)) and the provision capping variation in performance premiums (§ 201.106(b)) would impact grower incentives. Research indicates growers tend to raise broilers more efficiently with tournament contracts than with other forms of contracts or when LPDs raise broilers in their own facilities.<sup>6</sup> However, there is no literature addressing how growers' incentives might change if performance discounts were not part of the tournament or if variability in performance payments were limited. If changes to tournament contracts due to the Payment Systems rule's amendments to subpart N result in even very small decreases in feed efficiency, costs from implementation of the amendments could be considerably larger than the value of the benefits to growers due to reduced variability in compensation.

*Benefit-Cost Analysis*

AMS prepared an economic analysis of the costs and benefits of delaying the

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<sup>5</sup> See "Poultry Grower Payment Systems and Capital Improvement Systems," 90 FR 5202, January 16, 2025.

<sup>6</sup> 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).

effective date of §§ 201.106, 110, 112, and 290. AMS estimated cost and benefits associated with the Payment Systems rule when it was made final in 2025. AMS provided quantitative estimates of direct administrative costs associated with the Payment Systems rule, and qualitative descriptions of indirect costs and benefits. This analysis follows the same analytical approach used in the final rule. AMS invites comments and data concerning the benefits and costs of delaying the effective date of the Payment Systems rule.

The updated estimates incorporate the latest industry parameters and wage rates while maintaining consistency with the methodology used. Hourly wage rates were established using the following Bureau of Labor Statistics (BLS) classifications for each labor category as follows (NAICS Code – OCC code – OCC Title): Management (3116 – 11-1020 – General and Operations Managers) for live poultry dealers’ managers, and Legal (3110 – 23-1011 – Lawyers) for attorneys.<sup>7</sup> The average hourly wage rates used to estimate cost savings were updated from the final rule to include a 42.34 percent markup for benefits and are as follows: Management - \$102.56, Legal - \$145.93, Administrative - \$48.38, and Information Technology - \$101.72. For reference, the analysis in the final rule is described in detail in the *Federal Register* at 90 FR 5146 (see pages 5189 – 5206).<sup>8</sup>

AMS expects that LPDs would incur \$4.9 million in ongoing administrative costs for each of the first four years after the Payment Systems rule becomes effective and \$4.1 million annually thereafter. Poultry growers would have approximately \$249,000 in ongoing quantified administrative costs each year. Total ongoing administrative costs would be \$5.2 million for the four years and \$4.3 million thereafter.

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<sup>7</sup> U.S. Bureau of Labor Statistics, *May 2024 National Occupational Employment and Wage Estimates*, May 2024, <https://www.bls.gov/oes/special.requests/oesm24all.zip>.

<sup>8</sup> See “Poultry Grower Payment Systems and Capital Improvement Systems,” 90 FR 5190, January 16, 2025.

### *Regulatory Alternatives Considered*

AMS considered three alternatives to the proposed delay of §§ 201.106, 110, 112, and 290. The first alternative is the “do nothing” approach or maintaining the *status quo*. All regulations under the Packers and Stockyards Act would remain unchanged; that is, the Payment Systems rule would become effective on July 1, 2026. This first alternative forms the baseline against which AMS compares the other alternatives.

The second alternative is this proposed rule. AMS proposes to delay the effective date of the Payment Systems rule for 18 months. If finalized, the Payment Systems rule would become effective on December 31, 2027, rather than July 1, 2026.

AMS considered a third alternative, the 12-Month Delay alternative, which is similar to the preferred alternative, and proposes to delay the effective date of §§ 201.106, 110, 112, and 290 by 12 months (July 1, 2027) instead of 18 months (December 31, 2027).

### *Direct Quantified Benefits of the Proposed 18-Month Delay of §§ 201.106, 110, 112, and 290 – Preferred Alternative*

With the proposed 18-month delay of the Poultry Systems rule, much of the first-year costs in the final rule that AMS considered are one-time setup and preparation activities that processors and growers would incur before the rule became effective. AMS believes many of these costs have likely already occurred, and therefore they are not affected by the delay; however, AMS welcomes comments for the industry related to these costs during the comment period of this proposed rule. The delay would affect recurring costs. The delay would save live poultry growers and LPDs administrative costs associated with the ongoing administrative costs that would otherwise occur in the first 18 months after the Payment Systems rule becomes effective.

Delaying the effective date for 18 months would shift all costs for both LPDs and growers back by 18-months. This proposed rule would enable LPDs to save \$4.9 million

and poultry growers to save \$249,000 in administrative costs for a total of \$5.2 million in the first year. They would save an additional \$2.5 million and \$125,000, respectively, in the second year for a total of \$7.7 million. Administrative costs for LPDs were expected to decrease by \$800,000 in the fifth year after the rule became effective. If the effective date is delayed 18 months, the decrease in costs will be delayed as well. Costs would be \$800,000 higher in the fifth year and \$400,000 in the sixth year for LPDs. This would result in a ten-year total cost savings of \$6.1 million for LPDs and \$374,000 for poultry growers; a combined savings of \$6.5 million. Table 1 below summarizes cost savings to poultry growers and LPDs if the effective date of the Payment Systems rule is delayed until December 31, 2027.

**Table 1. Quantified benefits from savings in administrative costs for LPDs, and poultry growers from delaying the effective date of the Payments Systems rule for 18 months.**

Value	Growers (\$)	LPDs (\$)	Total (\$)
First-Year	249,000	4,902,000	5,151,000
Ten-Year Total	374,000	6,146,000	6,520,000
NPV discounted at 3%	360,000	6,038,000	6,398,000
NPV discounted at 7%	342,000	5,880,000	6,222,000
Annualized NPV discounted at 3%	42,000	708,000	750,000
Annualize NPV discounted at 7%	49,000	837,000	886,000

*Indirect Cost Savings/Benefits of the 18-Month Delay of §§ 201.106, 110, 112 and 290 – Preferred Alternative*

The indirect benefits (cost savings) of this proposed rule represent the indirect benefits incurred during the 18-month period of the delay of the effective date. AMS expects that §§ 201.106, 110, and 112 include provisions that may require LPDs to change their existing business practices, which has the potential to affect the indirect costs of the Payment Systems rule. As discussed in the Payment Systems rule, AMS does not have sufficient data to make an inference on the number of complexes that would need to change business practices or the magnitude of any changes that would be

required.<sup>9</sup>

If LPDs modify existing grower compensation structures in response to § 201.106, changes in performance-based payments could adversely affect grower performance incentives and cause growers to produce broilers less efficiently. As a result, LPDs could face increased production costs. Even a very small change in efficiency could result in relatively large increases in the cost of producing broilers. Those costs could be passed on to consumers.

If AMS enforcement of § 201.112 has the effect of preventing broiler growers from making additional capital investments, then such decisions to forgo investment will likely result in fewer benefits for LPDs, and more for growers. AMS is not able to quantify these lost benefits (costs) to LPDs.

As the preferred alternative proposes to delay the effective date of the Payment Systems rule for 18 months, LPDs and growers may experience indirect benefits proportional to this delay, though AMS expects these indirect benefits to be small relative to the benefits associated with the Payments Systems rule.

*Indirect Costs/Foregone Benefits of the 18-Month Delay of §§ 201.106, 110, 112 and 290 – Preferred Alternative*

There are unquantifiable benefits to the provisions regulating LPDs in §§ 201.106, 110, and 112, which would be foregone in the 18-month period in which the Payment Systems rule would be delayed under the preferred alternative. Section 201.106 could benefit growers from increased clarity and certainty about the lowest possible revenue and reduce variability in outcomes under a growing arrangement. Section 201.110 may benefit broiler growers through improved fairness in comparison. Section 201.112 may provide broiler growers with better information to make financial decisions.

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<sup>9</sup> See “Poultry Grower Payment Systems and Capital Improvement Systems,” 90 FR 5198, January 16, 2025.

The size of these unquantifiable benefits would be directly related to the extent of these reductions. However, AMS does not have sufficient data to make an inference on the number of complexes that would change business practices or the magnitude of any changes that would be required.

AMS expects broiler growers would benefit from the Payment Systems rule, though AMS is unable to predict the size of these benefits with certainty. The indirect benefits of the Payment Systems rule would still occur, they would just be delayed by 18 months. Thus, broiler growers would experience unquantifiable costs (foregone benefits) proportional to this delay, though AMS expects these unquantifiable costs to be small.

*Direct Cost Savings/Benefits of the 12-Month Delay Alternative*

AMS also evaluated benefits and costs of delaying the effective date for 12 months (12-Month Delay Alternative). The 12-Month Delay Alternative is similar to the proposed alternative, but the effective date of the Payment Systems rule would be delayed 12 rather than 18 months. Under the 12-Month Delay Alternative all costs for both LPDs and growers would be shifted back by one year, resulting in a savings to LPDs of \$4.9 million and poultry growers of \$249,000 in administrative costs for a total of \$5.2 million in savings. Because administrative costs for LPDs were expected to decrease in the fifth year after the rule became effective, costs in the fifth year would be \$800,000 higher for LPDs if the effective date is delayed 12 months. The ten-year total direct administrative cost savings would be \$4.3 million for the 12-Month Delay Alternative. The table below contains estimated administrative cost savings for LPDs and poultry growers for the 12-Month delay Alternative.

**Table 2. Quantified benefits from savings in administrative costs for LPDs and poultry growers from delaying the effective date of the Payments Systems rule for 12 months.**

Value	Growers (\$)	LPDs (\$)	Total (\$)
First-Year	249,000	4,902,000	5,151,000
Ten-Year Total	249,000	4,097,000	4,347,000

NPV discounted at 3%	242,000	4,065,000	4,307,000
NPV discounted at 7%	233,000	4,007,000	4,241,000
Annualized NPV discounted at 3%	28,000	477,000	505,000
Annualize NPV discounted at 7%	33,000	571,000	604,000

*Indirect Benefits/Cost Savings of the 12-Month Delay Alternative*

As in the case of the preferred alternative, the indirect benefits of the 12-Month Delay Alternative represent the indirect costs not incurred during the 12-month period of the delay of the effective date. The indirect costs of the final rule would still occur, they would just be delayed. Again, AMS cannot rule out the possibility that incentives may be affected by the Payment Systems rule, and AMS is unable to predict specific effects with certainty. LPDs and growers may experience indirect benefits (cost savings) proportional to this 12-month delay, though AMS expects these indirect benefits to be very small. Because the proposed delay is shorter, AMS expects the indirect benefits of 12-Month Delay Alternative to be smaller than the indirect benefits of the preferred alternative.

*Unquantifiable Direct Costs Incurred of the 12-Month Delay Alternative*

As with the preferred alternative, a 12-month delay of the effective date of the provisions regulating LPDs in §§ 201.106, 110, and 112 would likely impose additional unquantifiable direct costs on LPDs. The nature of these unquantifiable direct costs is the same as in the preferred alternative, but these costs may be smaller do to the shorter proposed delay of the effective date of the Payment Systems rule.

*Costs/Foregone Benefits of the 12-Month Delay Alternative*

The nature of the costs (benefits foregone) under 12-Month Delay Alternative are the same as under the preferred alternative. As in the case of the preferred alternative, the costs of the 12-Month Alternative Delay represent the benefits not incurred during the period of the proposed delay of the effective date. The benefits of the final rule would still occur, they would just be delayed. As the 12-Month Delay Alternative represents a shorter delay, AMS expects the costs of 12-Month Delay Alternative to be smaller than

the costs of the preferred alternative.

### *Comparison of Alternatives*

The benefits and costs of delaying the effective date of the Payments Systems rule are very similar, but all costs and benefits are slightly smaller for the 12-Month Delay Alternative. AMS invites comments and data concerning the benefits and costs of delaying the effective date of the Payment Systems rule.

AMS is proposing to delay the effective date of the Payment Systems rule to allow for thorough consideration of estimated costs and the policy and legal issues associated with the final rule. Because twelve months may not provide adequate time for the thorough consideration needed, AMS chose the preferred alternative of proposing to delay the effective date by 18 months.

### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market.

AMS is proposing to delay implementation of the Payment Systems rule which added §§ 201.106, 110, 112 and 290 to the regulations under the P&S Act. Sections 201.106, 110, and 112 would regulate LPDs that contract with poultry growers to raise broilers. The regulations would have no effect on LPDs that contract or process turkeys, geese, ducks or other fowl unless they also contract or process broilers. Currently, the Payment Systems rule is scheduled to go into effect on July 1, 2026. This proposed rule would delay implementation until December 31, 2027.

The final rule: (1) prohibits livestock poultry dealers (LPDs) from reducing a grower's compensation based on the grower's ranking under a poultry grower ranking system; (2) establishes a presumptive violation of the P&S Act by LPDs when aggregate

gross annual payments based upon a grower's ranking under a poultry grower ranking system exceeds a certain threshold; (3) holds LPDs to a duty of fair comparison when designing and operating their poultry grower ranking system and requires documentation of compliance with that duty; and (4) requires LPDs to provide certain disclosures when requesting or requiring that broiler growers make additional capital investments.

When AMS finalized the Payment Systems rule, AMS explained there was uncertainty as to whether the benefits would outweigh the costs.<sup>10</sup> There is no literature addressing how growers' incentives might change if performance discounts were not part of the tournament or if variability in performance payments were limited.

AMS is proposing to delay the effective day of the Payment Systems rule to allow for thorough consideration of estimated costs and the policy and legal issues associated with the final rule.

The only firms that the Payment Systems rule directly regulates are LPDs. The SBA defines small businesses by their North American Industry Classification System Codes (NAICS). LPDs, NAICS 311615, are considered small businesses if they have fewer than 1,250 employees.<sup>11</sup>

AMS maintains data on LPDs from the annual reports<sup>12</sup> these firms file with AMS. AMS records of annual reports identified 45 LPDs that processed broilers subject to the regulations during fiscal year 2023. Twenty-four of the LPDs were small businesses according to the SBA standard.

Delaying implementation of the Payment Systems rule would not cause significant costs for any LPD. LPDs would still be required to comply with §§ 201.106, 110, and 112 of the regulations, but would have until December 31, 2027, to do so. The

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<sup>10</sup> See "Poultry Grower Payment Systems and Capital Improvement Systems," 90 FR 5198, January 16, 2025.

<sup>11</sup> 13 CFR part 121.

<sup>12</sup> Live poultry dealers are required to file form PSD 3002, "Annual Report of Live Poultry Dealers" (OMB Control No. 0581-0308), with AMS.

regulations place restrictions on the way LPDs' contract with growers. Delaying implementation would give LPDs more time to make changes to their business practices to comply with the new regulations. No LPD, whether small or large, would be required to change any practices as result of this proposed regulatory action. No LPD, whether small or large, would be required to change any practices as result of this proposed regulatory action. Rather, LPDs are expected to benefit from the delay of the effective date for §§ 201.106, 110, 112, and 290 due to the cost savings incurred.

In evaluating direct cost savings from delaying the Payment Systems rule, AMS follows the same analytical approach used in the final rule. The updated estimates incorporate the latest industry parameters and wage rates while maintaining consistency with the methodology used. Hourly wage rates were established using the following BLS classifications for each labor category as follows (NAICS Code – OCC code – OCC Title): Management (3116 – 11-1020 – General and Operations Managers) for live poultry dealers' managers, and Legal (3110 – 23-1011 – Lawyers) for attorneys.<sup>13</sup> The average hourly wage rates used to estimate cost savings were updated from the final rule to include a 42.34 percent markup for benefits and are as follows: Management - \$102.56, Legal - \$145.93, Administrative - \$48.38, and Information Technology - \$101.72. For reference, the analysis in the final rule is described in detail in the *Federal Register* at 90 FR 5146 (see pages 5189 – 5206).<sup>14</sup>

*Direct Cost Savings/Benefits to Small LPDs of the Proposed 18-Month Delay of §§ 201.106, 110, 112, and 290 – Preferred Alternative*

With the proposed 18-month delay of the Poultry Systems rule, much of the first-year costs in the final rule that AMS considered are one-time setup and preparation

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<sup>13</sup> U.S. Bureau of Labor Statistics, *May 2024 National Occupational Employment and Wage Estimates*, May 2024, <https://www.bls.gov/oes/special.requests/oesm24all.zip>.

<sup>14</sup> See "Poultry Grower Payment Systems and Capital Improvement Systems," 90 FR 5190, January 16, 2025.

activities that processors would incur before the rule became effective. AMS believes many of these costs have likely already occurred, and therefore they are not affected by the delay; however, AMS welcomes comments from the industry related to these costs during the comment period of this proposed rule.

The delay would affect recurring costs. Delaying the effective date of the final rule will enable LPDs to avoid annual administrative costs that would otherwise occur in the first 18 months after the Payment Systems rule becomes effective. Delaying the effective date for 18 months would shift all costs for small LPDs back by 18 months. This proposed rule would enable small LPDs to save \$587,000 in administrative costs in the first year after July 1, 2026, which is the first year after the rule would otherwise become effective. They would save an additional \$294,000 in the second year for a total of \$881,000. Administrative costs for small LPDs were expected to decrease by \$72,000 in the fifth year after the rule became effective. If the effective date is delayed, the decrease in costs will be delayed as well, and costs in the fifth year would be \$72,000 higher for small LPDs. These lower administrative costs were expected to continue in the sixth year after the rule became effective. If the effective date is delayed, the decrease in costs for the first half of the sixth year will also be delayed, and costs in the sixth year would be \$36,000 higher for small LPDs. This would result in a ten-year total cost savings of \$773,000 for small LPDs. Column three in table 3 below summarizes cost savings to small LPDs if the effective date of the Payment Systems rule is delayed until December 31, 2027.

*Direct Cost Savings/Benefits of the 12-Month Delay Alternative*

AMS also evaluated benefits and costs of delaying the effective date for 12 months (12-Month Delay Alternative). The 12-Month Delay Alternative is similar to the proposed alternative, but the effective date of the Payment Systems rule would be delayed 12 rather than 18 months. Under the 12-Month Delay Alternative all costs for

small LPDs would be shifted back by one year, resulting in savings to small LPDs of \$587,000 in administrative costs. Because administrative costs for small LPDs were expected to decrease in the fifth year after the rule became effective, costs in the fifth year would be \$72,000 higher for small LPDs if the effective date is delayed 12 months. The ten-year total direct administrative cost savings would be \$515,000 for the 12-Month Delay Alternative. Column two in table 3 below contains estimated administrative cost savings for small LPDs for the 12-Month Delay Alternative.

**Table 3: Quantified Benefits from Savings in Administrative Costs for Small LPDs from Delaying the Effective Date of the Payments Systems Rule for 12 and 18 Months**

Value	12-Month Delay (\$)	18-Month Delay (\$)
<b>All Small LPDs Combined</b>		
First-Year	587,000	587,000
Ten-Year Total	515,000	773,000
NPV discounted at 3%	508,000	755,000
NPV discounted at 7%	497,000	730,000
Annualized NPV discounted at 3%	60,000	88,000
Annualized NPV discounted at 7%	71,000	104,000
<b>Per Entity</b>		
First-Year	24,000	24,000
Ten-Year Total	21,000	32,000
NPV discounted at 3%	21,000	31,000
NPV discounted at 7%	21,000	30,000
Annualized NPV discounted at 3%	2,000	4,000
Annualized NPV discounted at 7%	3,000	4,000

#### *Threshold Analysis*

LPDs report net sales in Annual Reports to AMS.<sup>15</sup> While net sales are not the same as annual revenue, unless the small LPDs have diversified income, net sales is a reasonable substitute for annual revenue. Table 4 below groups small LPDs' net sales into quartiles, reports the average net sales in each quartile, and compares average net sales to average expected cost savings from delaying the Payment Systems rule for 18 months. If a significant impact is defined as 1 percent of net sales and a substantial

<sup>15</sup> Live poultry dealers are required to file form PSD 3002, "Annual Report of Live Poultry Dealers" (OMB Control No. 0581-0308), with AMS.

number is 25 percent (6 firms) of the small businesses, expected direct cost savings resulting from delaying the effective date of the Payment Systems rule 18 months would not be significant. Savings would be largest for the smallest quartile, but not significant. First-year cost savings for the smallest quartile would be 0.24 percent of net revenues. Annualized savings are less than the first-year cost savings.

**Table 4: Comparison of Small Live Poultry Dealers’ Net Sales to Expected Direct Cost Savings from Delaying the Effective Date of Payment Systems Rule for 18 Months**

<b>Quartile</b>	<b>Average Net Sales</b>	<b>First-Year Total as a Percent of Net Sales</b>	<b>Ten Year NPV Annualized at 3 Percent as a Percent of Net Sales</b>	<b>Ten Year NPV Annualized at 7 Percent as a Percent of Net Sales</b>
0 to 25%	\$10,017,311	0.244	0.037	0.043
25 to 50%	\$34,567,539	0.071	0.011	0.012
50 to 75%	\$92,380,634	0.026	0.004	0.005
75 to 100%	\$226,958,521	0.011	0.002	0.002

Data in the table do not account for indirect cost savings related to delaying the effective date of the Payment Systems rule. If LPDs modify existing grower compensation structures in response to § 201.106, changes in performance-based payments could adversely affect grower performance incentives and cause growers to produce broilers less efficiently. As a result, LPDs could face increased production costs. If AMS enforcement of § 201.112 has the effect of preventing broiler growers from making additional capital investments, then such decisions to forgo investment would likely result in fewer benefits for LPDs.

As the preferred alternative proposes to delay the effective date of the Payment Systems rule for 18 months, LPDs and growers may experience indirect benefits proportional to this delay. However, AMS was not able to quantify these indirect benefits. After adding the indirect benefits with the direct cost savings, the benefits of delaying the effective date of the Payment Systems rule could be significant for a

substantial number of LPDs.

*12-Month Delay Alternative*

Benefits of the 12-Month Delay alternative would be very similar to the preferred alternative, but because the delay is shorter, the benefits to LPDs would be less. The table below indicates that neither first-year cost savings to LPDs nor annualized cost savings would be greater than one percent of average net sales for any quartile. Table 5 below has direct cost savings as percentage of average net sales for growers in each quartile.

As with the preferred alternative, LPDs would likely experience indirect benefits from delaying the effective date of the Payment Systems rule. The benefits would be similar to those associated with the preferred alternative, but because the time delay is shorter in the 12-Month Delay alternative, the benefits would be less than the benefits associated with the preferred alternative.

**Table 5: Comparison of Small Live Poultry Dealers' Net Sales to Expected Direct Cost Savings from Delaying the Effective Date of Payment Systems Rule for 12 Months**

<b>Quartile</b>	<b>Average Net Sales</b>	<b>First-Year Total as Percent of Net Sales</b>	<b>Ten Year NPV Annualized at 3 Percent as a Percent of Net Sales</b>	<b>Ten Year NPV Annualized at 7 Percent as a Percent of Net Sales</b>
0 to 25%	\$10,017,311	0.244	0.025	0.029
25 to 50%	\$34,567,539	0.071	0.007	0.009
50 to 75%	\$92,380,634	0.026	0.003	0.003
75 to 100%	\$226,958,521	0.011	0.001	0.001

After combining the direct and indirect benefits, LPDs would gain more from the preferred alternative, but the difference between the alternatives is small relative to the costs and benefits associated with Payment Systems rule. AMS is proposing to delay the effective date of the Payment Systems rule to allow for thorough consideration of estimated costs and the policy and legal issues associated with the final rule. Because twelve months may not provide adequate time for the thorough consideration needed,

AMS chose the preferred alternative of proposing to delay the effective date by 18 months.

AMS does not expect direct cost savings to be significant for a substantial number of LPDs. However, AMS is uncertain of the size of unquantified indirect benefits. If they are added to the quantified savings, benefits could be significant for substantial number of small LPDs. AMS invites comments and data concerning the benefits and costs of delaying the effective date of the Payment Systems rule.

#### **D. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), AMS requested OMB approval of the new information collection and recordkeeping requirements related to the Payment Systems rule when it was proposed in the *Federal Register* on June 10, 2024 (89 FR 49002). The information collection was approved under OMB Control No. 0581-0346 for a total of 59,182 hours for the first year, and 42,682 hours per year thereafter. No additional collection or recordkeeping requirements would be imposed on the public if the proposal to delay the effective date of the Payment Systems rule is finalized. Accordingly, OMB clearance is not required by the Paperwork Reduction Act.

#### **E. Civil Rights Impact Analysis Statement**

AMS has considered the potential civil rights implications of this proposed rule on members of protected groups and has determined this proposed 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.

#### **F. Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult with Indian Tribes on a government-to-government basis on policies that have Tribal implications. This

includes regulations, legislative comments or proposed legislation, and other policy statements or actions. Consultation is required when such policies 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. The following is a summary of activity to date.

AMS engaged in a Tribal Consultation in conjunction with a previous rulemaking also under the P&S Act (“Inclusive Competition and Market Integrity Under the Packers and Stockyards Act” (87 FR 60010, October 3, 2022)) on January 19, 2023, in person in Tulsa, Oklahoma, and virtually. AMS received multiple Tribal comments from that Consultation, many of which were specific to and considered in that rulemaking. In that consultation, Tribes raised legal concerns with respect to the jurisdiction of AMS enforcement of the P&S Act. Tribes commented that the P&S Act does not apply to Tribes and Tribal entities. Those comments raise a legal issue of statutory interpretation, but these concerns are not directly implicated by this rulemaking. AMS does not find that this rulemaking carries substantial direct effects on one or more Indian Tribes beyond the purely legal issue raised during consultation.

AMS recognizes and supports the Secretary's desire to incorporate Tribal and Indigenous perspectives, remove barriers, and encourage Tribal self-determination principles in USDA programs, including hearing and understanding Tribal views on legal authorities and cost implications as facts and circumstances develop. If a Tribe requests additional consultation, AMS will work with USDA's Office of Tribal Relations to ensure meaningful consultation is provided in accordance with Executive Order 13175.

#### **G. Executive Order 12988**

This proposed rule is not intended to have a retroactive effect. If adopted, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rulemaking.

#### **H. E-Government Act**

AMS is committed to complying with the E-Government Act (44 U.S.C. 3601, *et seq.*) 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.

#### **I. Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more (adjusted for inflation) in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rulemaking will not compel the expenditure in any one year of \$100 million or more (adjusted for inflation) by State, local, and Tribal governments, in the aggregate, or by the private sector. Therefore, a statement under 2 U.S.C. 1532 is not required.

**Erin Morris,**  
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