

information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) The 2000–2001 marketing year begins June 1, 2000, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable spearmint oil handled during such marketing year; (2) this action decreases the assessment rate for assessable spearmint oil beginning with the 2000–2001 marketing year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

Interested persons are invited to comment on this rule. A 30-day comment period is provided. This period is deemed appropriate because the 2000–2001 marketing year begins June 1, 2000.

#### List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

#### **PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST**

1. The authority citation for 7 CFR part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 985.141 is revised to read as follows:

#### **§ 985.141 Assessment rate.**

On and after June 1, 2000, an assessment rate of \$0.09 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Dated: March 30, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

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#### **DEPARTMENT OF AGRICULTURE**

#### **Grain Inspection, Packers and Stockyards Administration**

#### **9 CFR Part 201**

**RIN 0580–AA64**

#### **Regulations Issued Under the Packers and Stockyards Act**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending existing scales and weighing regulations under the Packers and Stockyards (P&S) Act to include requirements regarding the weighing of feed whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The current regulations do not contain any requirements regarding the weighing of feed although, in some circumstances, feed weight affects payment or settlement to livestock growers and poultry growers. The amendment to the current regulations will provide livestock growers and poultry growers with a measure of assurance that feed weight is accurately or reasonably determined and feed weight is properly documented whenever feed weight

affects payment or settlement to livestock growers or poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement.

**EFFECTIVE DATE:** May 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael J. Caughlin Jr., Director, Office of Policy/Litigation Support, GIPSA, USDA, 1400 Independence Ave., SW, Stop 3646, Washington, DC 20250–3646. He can be reached by phone at 202–720–6951.

**SUPPLEMENTARY INFORMATION:** GIPSA is amending existing scales and weighing regulations to include requirements regarding the weighing of feed when the weight of feed is a factor in determining payment or settlement to livestock growers and poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement.

#### **Background**

On February 12, 1997, GIPSA published an Advance Notice of Proposed Rulemaking (ANPRM) (62 FR 5935–5937) soliciting comments from poultry growers, integrators, and other interested parties on the need for and the possible wording of regulations regarding comparison contracts, feed weighing procedures, and live poultry weighing. GIPSA received 3,415 comments, of which 1,129 expressed concerns regarding feed weighing procedures including concerns that feed is not properly weighed; the weight should be printed electronically and not handwritten; the truck delivering the feed should be sealed to secure each individual lot of feed; and excess feed that is returned should be measured and properly documented to credit the grower for the unused feed.

Many of those comments also suggested that feed scales should be better regulated by requiring semiannual testing by competent testing agencies or companies as is currently required for scales used to weigh live poultry. In addition, GIPSA received comments prior to initiating this rulemaking process from livestock growers and continues to receive complaints that indicate that these same concerns exist in the livestock industry. Furthermore, GIPSA continues to receive complaints from individual livestock growers and poultry growers concerning feed weights both with respect to feed deliveries and excess feed picked up or returned at the end of the growing cycle.

On April 2, 1999, GIPSA published a Notice of Proposed Rulemaking (NPRM) (64 FR 15938–15942) proposing to amend existing scales and weighing

regulations under the P&S Act to include requirements regarding the weighing of feed whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement.

#### Comments in Response to the NPRM

We received 37 comments in response to the NPRM. Of the comments received, 25 supported the NPRM, 7 opposed, 2 were neutral and 3 commented on issues other than those proposed in the NPRM. Commenters were located in the States of Alabama (1), Arkansas (5), Delaware (2), Georgia (2), Iowa (1), Maryland (1), Minnesota (3), Mississippi (1), Missouri (2), North Carolina (3), Pennsylvania (1), Virginia (3), and West Virginia (1). State location could not be determined for 6 commenters, and 5 commenters were from the District of Columbia. Comments were received from: poultry trade associations (8), producer and grower associations (5), poultry growers (14), poultry integrators (7), feed companies (2), and a state weights and measures department.

#### Comments Supporting the NPRM

Six growers commented that the proposed regulation changes would help ensure fair dealings between contract growers and integrators. A poultry integrator and a national trade association, which represents the producers/processors of more than 95 percent of the broiler/fryer chickens marketed in the United States, commented that the amendment will help to alleviate concerns that some growers have with respect to weighing feed. Three poultry integrators commented that the proposed feed weighing regulation either was reasonable, has been standard procedure in their firms for many years, or does not differ greatly from their present practices. A State farm association, whose State's poultry production was \$730 million in cash receipts, commented it believes the substantive regulation governing feed weighing will improve company accuracy and fairness in determining growers' individual pay within a competitive pay or settlement system as well as the accountability of individual companies and production complexes. The nation's largest general farm association commented that GIPSA's action to strengthen production contract-related feed weighing rules is consistent with GIPSA's mission to facilitate the marketing of grains, livestock, poultry, and meat. A farmers' association, with 300,000 farm and

ranch members, commented it believes the proposed rule is a good first step and supports the proposed rule. A national grower association stated that this rule is very important, and the rule should go a long way towards ensuring accurate weighing. A State poultry association and a national poultry association, which represents more than 95 percent of the U.S. turkey industry including all phases of growing and processing, commented that they support the basic concept of amending the regulations to regulate the weighing of feed under the P&S Act. A broiler trade association commented that, in general, it commends GIPSA for the proposed rule.

#### Comments Generally Opposing the NPRM

Seven comments were filed in opposition to the NPRM. There were two general reasons given for opposing the NPRM. One was that the rule was not needed, and the other was that the rule did not go far enough. A feed company and a national trade association, representing about 1,000 grain, feed, processing, and grain-related firms comprising 5,000 facilities that handle more than two-thirds of all U.S. grains and oilseeds, commented that several provisions are redundant or inconsistent with existing Federal and State regulatory requirements that govern scales used to weigh feed. These comments cited two regulations: 21 CFR 225.30 and 225.130. These two regulations pertain to scales used in the production of a medicated feed of intended potency and purity and do not regulate scales used to weigh feed where the weight of feed is a factor in determining payment or settlement to livestock growers or poultry growers.

A State trade association, representing country elevators and feed mills, commented that the NPRM unfairly focuses too much attention on feed weighing and feed delivery as factors affecting feed efficiency contracts and not enough on other factors such as ration density, sanitation and disease. Two growers commented that the proposed feed weighing regulation is inadequate to ensure that feed is accurately weighed or reasonably determined.

#### Objections or Concerns About Specific Parts of the NPRM

Many commenters, both those in general support of and those in opposition to the rule, raised some objections or concerns about some part of the NPRM. These objections or concerns regarding the NPRM and

GIPSA's response to those comments are as follows.

*Comment: Seals*—Thirteen commenters mentioned the use of seals to seal feed bins or feed compartments. The comments ranged from seeing the use of seals as a small step forward or as a burden. The majority of the comments questioned the need for seals or objected to their use.

*Response:* The proposed rule does not require each feed bin or feed compartment be sealed. However, if a feed supplier uses seals to help assure the grower receives all of his or her feed, the proposed rule requires a feed supplier to use numbered seals and record the seal numbers on the weigh ticket.

*Comment: Pick Up of Excess Feed*—Eleven comments were received regarding excess feed that is picked up from a grower and the NPRM's proposal that § 201.55(b) require the weight of excess feed be "reasonably determined" using a "mutually acceptable" method. The comments ranged from asserting the language will not work, to suggesting that the language be clarified to indicate that alternative systems to weighing picked up excess feed on a scale are acceptable to determine feed weight.

*Response:* To address the concerns raised in these comments, we have changed the language in § 201.55(b) to read as follows. "Whenever the weight of feed is a factor in determining payment or settlement to such livestock grower or poultry grower when the livestock or poultry is produced under a livestock or poultry growing arrangement, any feed that is picked up from or returned by a livestock grower or poultry grower must be weighed or its weight must be reasonably determined. When feed is picked up or returned and not weighed, the stockyard owner, market agency, dealer, packer, or live poultry dealer must document that the method used reasonably determines weight and is mutually acceptable to it and the livestock grower or poultry grower. The stockyard owner, market agency, dealer, packer, or live poultry dealer must document and account for the picked up or returned feed weight."

*Comment: Scale Ticket Printing and Completion*—Nine commenters mentioned scale ticket printing and completion. The comments primarily requested clarification on the information needed to adequately identify the feed delivery vehicle and grower/lot identification.

*Response:* The amendment to § 201.49 requires that scale tickets evidencing the weighing of feed contain the same information that is required on scale tickets completed when weighing live

poultry except that scale tickets do not need to include weather conditions or the number of poultry.

*Comment:* Printing Tare, Gross and Net Weight—Eight comments were received related to printing tare, gross and net weight. The comments ranged from suggesting that handwritten net weight determined from mechanically printed gross and tare should be acceptable, to suggesting that printing a net weight on bulk weighing systems should be sufficient.

*Response:* If the net weight is determined by the difference between scale-printed tare and gross weights and the mechanical or electronic printer does not have the capability to print the net weight, the net weight can be handwritten. On bulk weighing systems where only the net weight is determined, the gross and tare weights do not have to be printed.

*Comment:* Scale Testing and Providing Report of Test to P&S Regional Offices—Five comments were received regarding testing and submission of the test reports to the P&S regional offices. The comments ranged from suggesting that this provision is redundant or inconsistent with existing Federal and State regulatory requirements for scales used to weigh feed to suggesting that scale test reports not be sent to the regional offices.

*Response:* GIPSA's research did not identify any other Federal agency that has jurisdiction over all scales used to weigh feed where the weight of the feed is a factor in determining payment or settlement to livestock growers or poultry growers. The rule imposes the same requirements for scales used to weigh feed as for all other scales used by industry members who are subject to the P&S Act, including the requirement that scale test reports be sent to the appropriate P&S regional office.

*Comment:* Qualified Scale Operator—Three comments were received requesting that "qualified" be defined or requesting guidance on what certification or training is required by the rule.

*Response:* A scale operator is "qualified" if the operator is trained to operate scales in a manner that assures the accurate weight of livestock, livestock carcasses, live poultry, or feed. The rule does not require a specific training method to qualify someone to operate scales.

#### Other Comments to the NPRM

GIPSA received several comments related to feed weighing but not directly related to the rule. These comments and GIPSA's response to the comments follow:

*Comment:* GIPSA has specific authority to request the reweighing of livestock; however, no amendments were proposed to extend the Agency's authority to cover feed.

*Response:* Sections 402 and 407 of the P&S Act (7 U.S.C. 222, 228) grant the Secretary the authority to issue regulations as may be necessary to carry out the provisions of the Act. Inaccurately weighed feed may preclude full payment to growers. Therefore, weighing feed inaccurately would constitute an unfair practice under sections 202 and 312 of the Act. 7 U.S.C. 192, 213. Sections 402 and 407 authorize the Secretary to promulgate regulations governing the weighing of feed when feed weight affects payment or settlement to a producer or grower and to prevent violation of the Act. Therefore, no amendment to GIPSA's authority is necessary.

*Comment:* The rule should provide for compensation to growers (livestock and poultry), plus punitive damages against integrators (live poultry dealers).

*Response:* Administrative sanctions for violations of the Act by livestock firms are set forth in sections 203(b) (packers) and 312(b) (stockyard owners, market agencies, or dealers) of the P&S Act. 7 U.S.C. 193(b), 213(b). Administrative sanctions for certain violations of the Act by live poultry dealers are set forth in section 411 of the Act. 7 U.S.C. 228b-2. Section 404 sets forth the procedures for prosecuting violations not covered by section 411. 7 U.S.C. 224. Section 308 of the Act sets forth the liability of subject entities to injured persons and the procedures to pursue a private right of action. 7 U.S.C. 209.

*Comment:* The rule should allow the grower (livestock or poultry) to be present for weighing if the grower so chooses.

*Response:* The rule does not address this issue. However, livestock growers and poultry growers have the right to be present during the weighing of feed whenever the weight of feed is a factor in determining payment or settlement under a livestock or poultry growing arrangement.

*Comment:* The rule should allow a grower to require feed trucks to weigh feed at the farm if the grower has a scale.

*Response:* The rule does not address this issue. We do not have jurisdiction over growers, and we cannot require growers to maintain scales in compliance with regulations promulgated under the P&S Act.

The rule addresses the concerns of livestock growers and poultry growers who produce livestock or poultry under a livestock or poultry growing

arrangement. When the weight of the feed is a factor in determining payment or settlement to livestock growers or poultry growers, the rule requires stockyard owners, market agencies, dealers, packers, or live poultry dealers to weigh feed accurately, to weigh or reasonably determine the weight of excess feed that is picked up from or returned by the livestock grower or poultry grower and to properly account for feed weight. "Growing arrangement" with respect to poultry means "poultry growing arrangements" as defined in section 2(a)(9) of the Act (7 U.S.C. § 183(a)(9)). "Growing arrangement" with respect to livestock means an arrangement in which livestock is produced under contract with a packer. Weight of feed is not considered to be a factor in determining payment to livestock producers in feedlot transactions in which the producer is charged a fee based on feed costs.

All feed scales, including those which are not generally used to sell directly to the general public and are usually not required to be tested by State weights and measures officials, fall under the purview of this rule. In most States, feed scales are not considered commercial devices unless the feed is sold directly to the general public. Therefore, State regulatory oversight of the weighing of feed delivered to livestock growers or poultry growers is not adequate to address the growers' concerns. Extending existing regulations of the P&S Act governing weighing practices and technical requirements for scales to include scales used to weigh feed will result in uniform requirements for weighing feed whenever feed weight affects the payment or settlement to livestock growers and poultry growers when livestock or poultry is produced under a livestock or poultry growing agreement. Basic scale requirements and weighing practices, therefore, will assure that payment or settlement is based on accurate weights whenever feed weight affects payment or settlement to livestock growers or poultry growers in livestock and poultry growing arrangements.

This rule amends 9 CFR 201.49, 201.55, 201.71, 201.72, and 201.73 to include requirements regarding the weighing of feed whenever feed weight is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The modifications in these sections make the requirements for feed weighing consistent with the requirements for weighing livestock and live poultry.

Specifically, the rule amends § 201.49 to include paragraph (c) which requires that scale tickets be issued whenever feed weight is a factor in determining payment or settlement to livestock growers or poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement. The amendment specifies the information that must be shown on the scale ticket. Section 201.71 is amended to require that scales weighing feed: (1) Be installed, maintained, operated, and tested in accordance with the National Institute of Standards and Technology (NIST) Handbook 44, 1996 edition, entitled "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices"; (2) be equipped with a printing device used for recording weight; (3) be of sufficient length and capacity to weigh an entire load when feed is weighed on a vehicle scale; and (4) be found, upon test and inspection, to be in a condition to provide accurate weight. Section 201.72 is amended to include scales used to weigh feed in the requirement that scales be tested twice during each calendar year at intervals of approximately six months by competent persons and that copies of test reports be furnished to the appropriate P&S Programs' regional office. Section 201.73 is amended to require that stockyard owners, market agencies, dealers, packers and live poultry dealers employ, or insure that their feed suppliers employ, qualified persons to operate scales used to weigh feed and that they require such employees to operate these scales in accordance with the regulations.

Section 201.55 is amended to require that the actual weight of feed be shown on scale tickets or otherwise explained and that picked up or returned feed be weighed or its weight reasonably determined. The stockyard owner, market agency, dealer, packer, or live poultry dealer must document and account for the picked up or returned feed weight. The language of the amendment to section 201.55(b) has been modified slightly from the language of the proposed rule. The modification clarifies the rule's requirements but does not change the requirements as proposed in the NPRM.

This rule will not impose any significant additional regulatory burden on the affected industries since the feed scales of many subject firms are already routinely tested by State weights and measures organizations or by private scale companies. The additional recordkeeping required under this rule will impose little burden upon subject

firms since a majority of the affected entities already utilize adequate weighing and documentation procedures. Subject firms that choose to use seals may incur costs to document the use of numbered seals if they are not currently documenting their use of seals. However, the use of seals is optional, and, according to seal makers contacted by the Agency, numbered seals are less expensive than unnumbered seals. Therefore, at least part of the cost of documentation may be offset by the lower cost of numbered seals.

#### Civil Rights Statement

Pursuant to Departmental policy, GIPSA has considered the potential civil rights implications of this rule on minorities, women and persons with disabilities to ensure that no person or group will be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. This rule will apply in the same manner to all persons and groups whose activities are regulated, regardless of race, color, sex, national origin, religion, age, disability, or marital or familial status.

#### Executive Order 12866

This rule has been determined to be significant for the purpose of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget. A separate regulatory impact assessment was prepared and is available from Dr. Michael J. Caughlin, Jr., Director, Office of Policy/Litigation Support, GIPSA, USDA, 1400 Independence Ave., SW, Washington, DC 20250-3646; (202) 720-6951.

#### Executive Order 12988

This rule has been reviewed under E.O. 12988, Civil Justice Reform, and is not intended to have retroactive effect. This amendment will not pre-empt 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.

#### Effect on Small Entities

GIPSA is amending §§ 201.49, 201.55, 201.71, 201.72, and 201.73 of Title 9 of the Code of Federal Regulations to include feed weighing when the weight of feed is a factor in determining payment or settlement to livestock growers or poultry growers. The additional information collection is required to provide livestock growers and poultry growers (generally small entities) assurance that feed scales are

being tested and maintained properly, that feed is accurately weighed or its weight is reasonably determined, and that they are receiving proper and adequate documentation of the feed weight.

GIPSA has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule will affect both parties in growing arrangements in which the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower. In most instances, the livestock grower or poultry grower will be a small entity and is the intended beneficiary of this rule. Because the costs of complying with this rule usually will be borne by the stockyard owner, market agency, dealer, packer or live poultry dealers, the economic impact on growers is expected to be negligible.

The costs of compliance will be borne by any stockyard owner, market agency, dealer, packer or live poultry dealer who is party to a growing arrangement in which the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower. However, the economic impact on these entities is expected to be minimal. Approximately 260 poultry integrators currently supply feed to poultry growers and an estimated 50 additional entities operating subject to the P&S Act currently supply feed to livestock growers where the weight of feed is a factor in determining payment or settlement to livestock growers or poultry growers. Most of these 310 firms are considered small entities.

Subject firms will be responsible for ensuring that scales used to determine the weight of feed, whether theirs or their feed provider's, have a printing device and conform to the specifications of NIST Handbook 44 (H-44), 1996 edition. Scale installation companies usually do not install a scale system that would not comply with the requirements of this amendment to the regulations. Currently, most feed scales, including those used by small entities, have a weight-printing device and conform to H-44 requirements. GIPSA did not receive any comments on the NPRM from any subject entity claiming that it currently supplied feed under a growing arrangement and had no weight-printing device. One association for feed companies stated that many of its members do not have a weight-printing device, but it did not state whether any of those members also currently provide feed for a subject entity under a growing arrangement.

GIPSA contacted several scale installation companies and was advised that they would charge less than \$10,000 to equip an existing scale with a printing device and any additional equipment needed for the operation of the printing device. The subject entity, including any small entity, could spread this cost over many years because a printing device and any other needed equipment are used for many years. GIPSA anticipates that the cost of equipping an existing scale with a printing device would increase the costs of doing business to live poultry dealers or their feed supplying entities, including small entities, by less than one percent. Therefore, GIPSA does not anticipate any significant economic impact on small entities.

Under this rule, subject firms will be required to test scales twice a year and to submit a copy of each test report to the appropriate P&S regional office. Feed manufacturers, as is customary in most industries dealing in bulk commodities, have their scales tested frequently to ensure accurate weights, prevent system malfunction, and avoid down time. In addition, most entities affected by this rule currently have their scales tested at least twice a year, either by State or local weights and measures officials or by private scale companies. Any of these tests will satisfy the semiannual testing requirement. Those entities currently not conducting two scale tests a year will be required to obtain a second test either from a private scale company or from a State or local weights and measures department.

There will be a minimal recordkeeping burden on all subject entities, including small entities, who weigh or supply feed when the weight of feed is a factor in determining payment or settlement to a livestock or poultry grower who produces livestock or poultry under a growing arrangement. Those entities will be required to submit a copy of scale test reports, on a semiannual basis, to the appropriate P&S regional office. This will entail obtaining a copy of the scale test report, which generally is completed either by the State or local weights and measures department or by the private scale company as a matter of routine documentation, and mailing it to the appropriate P&S regional office. Many State and local weights and measures departments and scale companies already mail the copies of the scale test reports to the appropriate P&S regional office. If any of the subject firms chooses to use seals, the additional paperwork burden will be to note the seal number(s) on the feed ticket that the

subject firm is already required to supply to the grower.

Compliance with the requirements for scale tickets is projected to cause minimal burden on the industry. Those entities that do not print a scale ticket for weighed feed or that print scale tickets that do not include all the required information will have to change their procedures to print scale tickets for weighed feed and to include the required information on the scale tickets. However, the additional time to add the required information, such as truck or trailer numbers, grower's name, and whether the truck driver was on or off at the time of weighing, is insignificant.

In addition, subject firms will be required to retain weight records in accordance with the recordkeeping provisions of the Act. In general, this will not entail any retention burden beyond that of normal and customary business practices.

#### **Information Collection and Recordkeeping Requirements**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)), GIPSA has submitted a copy of this rulemaking to the Office of Management and Budget (OMB) for its review. GIPSA received no response to its invitation in the NPRM to comment on the increased paperwork burden associated with this regulation. Information and reporting collection burdens imposed by Part 201 have been approved under OMB control number 0580-0015.

#### **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, GIPSA is amending 9 CFR part 201 to read as follows:

#### **PART 201—[AMENDED]**

1. The authority citation for Part 201 is revised to read as follows:

**Authority:** 7 U.S.C. 222 and 228; 7 CFR 2.22 and 2.81.

2. Section 201.49 is amended by revising the heading and adding paragraph (c) to read as follows:

#### **§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock, live poultry, and feed.**

\* \* \* \* \*

(c) *Feed.* (1) Whenever feed is weighed by or on behalf of a stockyard owner, market agency, dealer, packer, or live poultry dealer where the weight of

feed is a factor in determining payment or settlement to a livestock grower or poultry grower, a scale ticket shall be issued which shall show:

(i) The name of the agency performing the weighing service or the name and location of the firm responsible for supplying the feed;

(ii) The name and address of the livestock grower or poultry grower;

(iii) The name or initials or number of the person who weighed the feed, or if required by State law, the signature of the weigher;

(iv) The location of the scale;

(v) The gross weight, tare weight, and net weight of each lot assigned to an individual grower, if applicable;

(vi) The date and time gross weight and tare weight, if gross and tare weights are applicable, are determined;

(vii) The identification of each lot assigned to an individual grower by vehicle or trailer compartment number and seal numbers, if applicable;

(viii) Whether the driver was on or off the truck at the time of weighing, if applicable; and

(ix) The license number or other identification numbers on the truck and trailer, if weighed together, or trailer if only the trailer is weighed, if applicable.

(2) Scale tickets issued under this paragraph shall be at least in duplicate form and shall be serially numbered and used in numerical sequence. One copy shall be retained by the person subject to the P&S Act, and a second copy shall be furnished to the livestock grower or poultry grower.

(Approved by the Office of Management and Budget under control number 0580-0015)

3. Section 201.55 is revised to read as follows:

#### **§ 201.55 Purchases, sales, acquisitions, payments and settlements to be made on actual weights.**

(a) Except as provided in paragraph (b) of this section, whenever livestock or live poultry is bought, sold, acquired, paid, or settled on a weight basis, or whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower by a stockyard owner, market agency, dealer, packer, or live poultry dealer when livestock or poultry is produced under a growing arrangement, payment or settlement shall be on the basis of the actual weight of the livestock, live poultry, and/or feed shown on the scale ticket. If the actual weight used is not obtained on the date and at the place of transfer of possession, this information shall be disclosed with the date and location of the weighing on the accountings, bills, or statements issued.

Any adjustment to the actual weight shall be fully and accurately explained on the accountings, bills, or statements issued, and records shall be maintained to support such adjustment.

(b) Whenever the weight of feed is a factor in determining payment or settlement to such livestock grower or poultry grower when the livestock or poultry is produced under a livestock or poultry growing arrangement, any feed that is picked up from or returned by a livestock grower or poultry grower must be weighed or its weight must be reasonably determined. When feed is picked up or returned and not weighed, the stockyard owner, market agency, dealer, packer, or live poultry dealer must document that the method used reasonably determines weight and is mutually acceptable to it and the livestock grower or poultry grower. The stockyard owner, market agency, dealer, packer, or live poultry dealer must document and account for the picked up or returned feed weight.

(Approved by the Office of Management and Budget under control number 0580-0015)

4. Section 201.71 is revised to read as follows:

**§ 201.71 Scales; accurate weights, repairs, adjustments or replacements after inspection.**

(a) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement shall be installed, maintained, and operated to ensure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code, and Weights Code of the 1996 edition of National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on January 11, 1989, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, NW, Suite 700, Washington, DC 20408.

(b) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purpose of purchase, sale, acquisition, payment, or settlement of livestock or live poultry, and all scales used for the purchase, sale, acquisition, payment, or settlement of livestock on a carcass weight basis shall be equipped with a printing device which shall record weight values on a scale ticket or other document.

(c) All vehicle scales used to weigh livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry shall be of sufficient length and capacity to weigh the entire vehicle as a unit: Provided, That a trailer may be uncoupled from the tractor and weighed as a single unit.

(d) No scale shall be operated or used by any stockyard owner, market agency, dealer, packer, or live poultry dealer to weigh livestock, livestock carcasses, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry unless it has been found upon test and inspection, as specified in § 201.72, to be in a condition to give accurate weight. If a scale is inspected or tested and found to be in a condition to give incorrect or inaccurate weights or if any repairs, adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested and determined to meet all accuracy requirements specified in the regulations in this section.

5. Section 201.72 is revised to read as follows:

**§ 201.72 Scales; testing of.**

(a) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, shall cause such scales to be tested by competent persons in accordance with the regulations in this part at least twice during each calendar year at intervals of approximately 6 months. More frequent testing will be required in cases where the scale does not maintain accuracy between tests.

(b) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, livestock carcasses, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock,

livestock carcasses or live poultry shall furnish reports of such tests and inspections on forms prescribed by the Administrator. The stockyard owner, market agency, dealer, packer or live poultry dealer shall retain one copy of the test and inspection report and shall file one copy with the P&S regional office for the region in which the scale is located.

(c) When scales used for weighing livestock, livestock carcasses, live poultry, or feed are tested and inspected by an agency of a State or municipality or other governmental subdivision, the forms ordinarily used by such agency for reporting test and inspection of scales shall be accepted in lieu of the forms prescribed for this purpose by the Administrator if such forms contain substantially the same information.

(Approved by the Office of Management and Budget under control number 0580-0015)

6. Section 201.73 is revised to read as follows:

**§ 201.73 Scale operators to be qualified.**

Stockyard owners, market agencies, dealers, packers, and live poultry dealers shall employ qualified persons to operate scales for weighing livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses, or live poultry, and they shall require such employees to operate the scales in accordance with the regulations in this part.

Dated: March 29, 2000.

**James R. Baker,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 2000-NM-86-AD; Amendment 39-11656; AD 2000-07-02]

RIN 2120-AA64

**Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is