

establish a threshold for the number of card replacements during a specified period of time to be considered excessive. That threshold shall not be less than four cards requested within 12 months prior to the request, unless the State agency has additional evidence indicating a suspected trafficking violation, as defined at § 271.2 of this chapter. If a trafficking violation is suspected prior to the fourth card request, the State agency shall refer the client for investigation and, if deemed appropriate, may provide a notice to the client, requiring the individual or household to contact the State agency to provide an explanation prior to receiving a subsequent replacement card.

(i) The State agency shall notify the household in writing when it has reached the threshold, indicating that the next request for card replacement will require contact with the State agency to provide an explanation for the requests, before the replacement card will be issued. The State agency shall also notify the household in writing once the threshold has been exceeded that the State agency is withholding the card until contact is made. These notices must:

(A) Be written in clear and simple language;

(B) Meet the language requirements described at § 272.4(b) of this chapter;

(C) Specify the number of cards requested and over what period of time;

(D) Explain that the next request, or the current request if the threshold has been exceeded, requires contact with the State agency before another card is issued;

(E) Provide all applicable information on how contact is to be made in order for the client to comply, such as whom to contact, a telephone number and address;

(F) Include a statement that explains what is considered a misuse or fraudulent use of benefits and the possibility of referral to the fraud investigation unit for suspicious activity.

(ii) Following notification, should another card be requested, the State agency shall require that the household contact the State agency to provide an explanation for the requests. If the client makes contact, the State agency shall make the replacement EBT card available for pick up or place the card in the mail in accordance with § 274.2(f) of this chapter within two business days following household contact with the State agency, regardless of whether or not an explanation was provided.

(A) If a household does not contact the State agency in response to the State

agency's notice, the State agency shall not issue a replacement card to the household and the case must be referred for investigation.

(B) The State agency shall educate the client on the proper use of the card if the explanation is deemed appropriate and the State agency shall not require contact upon subsequent requests, unless the pattern of card activity has changed since the initial contact and indicates possible trafficking activity.

(C) The State agency shall refer the individual for investigation in cases where the individual contacts the State agency but refuses to explain the card losses or the explanation provided appears to be indicative of trafficking in accordance with § 271.2 of this chapter. The State agency shall issue a replacement card to any household that makes the required contact so that the household has access to benefits in its EBT account while the investigation is underway and while awaiting a hearing, in accordance with § 273.16(e)(5).

(iii) In all cases, a State agency shall act to protect households containing homeless persons, elderly or disabled members, victims of crimes and other vulnerable persons who may lose EBT cards but are not committing fraud.

(6) *Excessive Replacement Card Notice.* The State agency shall monitor all client requests for EBT card replacements and send a notice, upon the fourth request in a 12-month period, alerting the household that their account is being monitored for potential, suspicious activity. If another replacement card is subsequently requested and trafficking is suspected, the State agency shall refer that case to the State's fraud investigation unit.

(i) The State agency shall be exempt from sending the Excessive Replacement Card Notice if they have chosen to exercise the option to withhold the replacement card until contact is made with the State agency, in accordance with paragraph (b)(5) of this section, as long as the State agency has chosen to use the minimum threshold, which requires sending the first warning notice on the fourth card replacement request within 12 months. If the State agency chooses to use a threshold higher than the fourth card replacement request, the State agency must send the Excessive Replacement Card Notice on the fourth card request in accordance with this section.

(ii) The State agency shall notify the household in writing upon their fourth card request that their case is being monitored. This notice shall, at a minimum:

(A) Be written in clear and simple language;

(B) Meet the language requirements described at § 272.4(b) of this chapter;

(C) Specify the number of cards requested and over what period of time;

(D) Explain that the transactions of the cardholder's account are being monitored for potential trafficking activity;

(E) Include a statement that explains what is considered a misuse or fraudulent use of benefits and the possibility of referral to the State's fraud investigation unit for suspicious activity.

(F) Provide contact information, including a telephone number, should the household have questions or concerns regarding the notice.

Dated: August 7, 2013.

**Audrey Rowe,**

*Administrator, Food and Nutrition Service.*

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## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 9 CFR Part 201

#### RIN 0580-AA99

#### Weighing, Feed, and Swine Contractors

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

**ACTION:** Final rule.

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**SUMMARY:** The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations issued under the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act), to ensure that payments by live poultry dealers and swine contractors to poultry and swine production contract growers are based on accurate weighing of both inputs and outputs. Specifically, we are amending a regulation about scale tickets to reduce redundant wording and to clarify weighing procedures. In addition, we are amending a regulation about reweighing to add swine contractors to the list of firms that must comply, and adding feed to the list of items for which reweighing may be requested. We are also amending two other regulations about weighing livestock and poultry to add weighing processes for feed, to add a specific time limit for weighing poultry, and to add swine contractors to the list of firms that must comply with care and promptness requirements.

**DATES:** *Effective Date:* September 20, 2013.

**FOR FURTHER INFORMATION CONTACT:** S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave. SW., Washington, DC 20250, (202) 720-7363, *s.brett.offutt@usda.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

GIPSA administers and enforces the P&S Act (7 U.S.C. 181-229, 229c.). Under authority delegated to us by the Secretary of Agriculture (Secretary), we are authorized (7 U.S.C. 228) to make those regulations necessary to carry out the provisions of the P&S Act.

This final rule clarifies existing requirements involving scale tickets and live poultry weighing. Currently, § 201.49 of the regulations issued under the P&S Act, "Requirements regarding scale tickets evidencing weighing of livestock, live poultry, and feed," contains redundant wording about scale tickets issued when weighing livestock, live poultry and feed. Because the requirements for numbering scale tickets and executing sufficient copies are largely the same for livestock, live poultry, and feed, we are consolidating in this final rule these general requirements into a new § 201.49(a), which is followed by separate specific requirements for livestock, live poultry, and feed. This final rule will require that a zero balance of a scale be recorded and that the time the zero balance was determined be printed on the scale ticket, which is consistent with other weighing regulations involving scale tickets. Additionally, we are removing regulatory language in § 201.108-1, "Instructions for weighing live poultry," regarding scale tickets that duplicates language in § 201.49. GIPSA believes that these revisions will clarify the requirements that are unique to each commodity and thus prevent confusion caused by the redundant language contained in the current regulations.

In this final rule, we are also clarifying that the "number of the person" who performed the weighing service means the identification number of that individual, not that person's telephone number. In addition, we are clarifying that the regulatory requirement for recording the license number of the truck and trailer applies to situations involving weighing separately the truck or the trailer, or both together. We are also making consistent throughout § 201.49 language about license numbers or other

identification numbers of trucks and/or trailers.

We are adding "swine contractors" to the list of firms required to comply with § 201.76, "Reweighing." We are also adding "feed" to the list of items that must be reweighed upon request by any authorized representative of the Secretary.

We are amending § 201.82(a), "Care and Promptness in Weighing and Handling Livestock and Live Poultry", to add "swine contractors" in the list of firms required to comply with this regulation. Presently, § 201.82(b) requires that live poultry dealers purchasing poultry under growout contracts obtain the gross weight for each load of poultry immediately upon arrival at the processing plant. This final rule will add a sentence to the end of § 201.82(b) to require that the weighing process begin without delay, and to establish the time period within which live poultry dealers must complete the weighing process. We are also amending § 201.82(b) to clarify that this section applies whenever the weight of live poultry is a factor in calculating payment to the grower. Finally, we are adding a new paragraph (c) to § 201.82 to prohibit the use of split transport trailer loads by live poultry dealers. Split loads of live poultry are loads containing flocks from more than one grower. We believe that prohibiting split loads will prevent live poultry dealers from failing to weigh each grower's flock promptly. The failure by a live poultry dealer to weigh poultry promptly can result in weight loss, injury, death or other avoidable losses to a poultry grower.

We are amending § 201.108-1 of the regulations, "Instructions for Weighing Live Poultry", to require additional procedures to ensure accurate weighing. We are also adding the term "feed" to the title of this section. In addition, we are amending § 201.108-1 to include the weighing of picked up feed in addition to the weighing of live poultry. In this final rule, we are also adding new procedures for weighing unused feed picked up from one or more poultry growers in a single load, including requirements for operating and maintaining onboard weighing systems and onboard weighing tickets. This final rule will ensure that unused feed is accurately weighed. GIPSA has found that failure to weigh unused feed by the live poultry dealer, or failure to use appropriately calibrated equipment, can result in inaccurate estimates of weight and inaccurate payment to the grower. Both feed (inputs) and live poultry (outputs) must be weighed accurately in

order to ensure that growers are compensated fairly.

GIPSA believes that this final rule will ensure the fair and accurate weighing of feed, poultry, and livestock. There will be less potential for live poultry dealers and swine contractors to engage in unfair and deceptive practices by delaying the weighing of livestock, using scales incorrectly or inaccurately, or denying requests for reweighing.

**Discussion of Comments and Final Action**

On February 11, 2008, GIPSA published a notice of proposed rulemaking in the **Federal Register** (73 FR 7686). While the initial comment period for the proposed rule ended on April 11, 2008, we subsequently extended the comment period to May 21, 2008 (73 FR 21286). After careful review and consideration of the 33 comments received, we are modifying the proposed amendments in the final rule as noted below.

We received seven letters from commenters that supported our proposed amendments and asked that we help protect poultry growers' investments. Specifically, the commenters asked that we ensure (1) that poultry and feed are weighed properly and (2) that poultry growers are allowed to watch as their birds are being weighed without fear of retaliation by the live poultry dealer. We believe that the first issue raised by the commenters was addressed adequately in our proposed amendments to § 201.49, § 201.76, § 201.82, and § 201.108-1. The second issue raised by these commenters is addressed in § 201.108-1(e)(4) of the current regulations, which has been redesignated as § 201.108-1(e)(3) in this final rule. Currently, § 201.108-1(e)(4) states, in part, that poultry growers, live poultry dealers, sellers, or others having legitimate interest in a load of poultry are entitled to observe the balancing, weighing, and recording procedures. A weigher shall not deny such persons that right or withhold from them any information pertaining to the weight.

It is GIPSA's position that the phrase "others having a legitimate interest in a load of poultry" includes (but is not limited to) members of the poultry grower's immediate family, agent(s), representative(s), employee(s), or business associate(s). Because we did not propose an amendment to the language of current § 201.108-1(e)(4) of the regulations, however, we are making no changes to this final rule based on these comments.

We received an additional 13 comments from poultry growers and

agricultural associations in response to GIPSA's proposed rule. All 13 comments included the suggestion that we require that live poultry dealers obtain the tare weight of the poultry trailer immediately after unloading. The commenters stated that this tare weight reading could be compared to the tare weight reading taken prior to loading and would account for possible snow or ice buildup underneath the trailer and/or any maintenance work performed on the trailer before or after loading.

Sections 201.49, 201.76, 201.82 and 201.108–1 of the current regulations do not address the number of tare weights that must be taken for each load or when tare weights must be taken. Because we did not propose changes to the number of tares taken for each load or the time-frame within which tares are taken, the issue raised by these comments is beyond the scope of our proposed rulemaking. The last sentence of proposed § 201.82(b), however, referred to the “completion of the weighing process” when describing the process of obtaining the gross load weight and not the entire weighing process for a load. We believe that this sentence may have led some people to believe that we were referring to the process of obtaining the net load weight. We will therefore clarify our requirement for “immediately” obtaining the gross weight for poultry in § 201.82(b) of the final rule to mean that the process of obtaining the gross weight must not exceed 30 minutes following arrival at the scale normally used for such weighing. To make clear that the last sentence of § 201.82(b) pertains only to obtaining the gross weight of loads and not the entire weighing process, GIPSA will modify this sentence in this final rule to read as set forth in the regulatory text of this rule.

Twelve of the 13 commenters agreed that copies of scale tickets must actually be provided to all parties to the transaction. To clarify the final rule, we are replacing the language requiring growers, purchasers, sellers, and live poultry dealers “be furnished” with scale tickets currently in § 201.49(b)(11) and § 201.49(c)(2) with language in § 201.49(a) “Sufficient copies must be executed and provided to all parties to the transaction.” This retains requirements that livestock producers and poultry growers be provided hard copies of their scale tickets.

One of the 12 commenters also suggested that GIPSA require that all parties be provided scale ticket copies immediately, before any change occurred in the weight due to fluctuations in temperature or truck/trailer maintenance. Sections 201.73–

1(e)(4) and 201.108–1(e)(4) of the current regulations under the P&S Act require that weighers permit anyone having a legitimate interest in livestock or poultry to observe the balancing, weighing, and recording procedures for the livestock or poultry. Livestock or poultry producers may request that the weigher provide them with a copy of the scale ticket for their livestock or poultry at the time of weighing. Since the temperature would primarily affect the weight of the animals, we believe that our requirement for obtaining the gross weight within 30 minutes of arrival adequately addresses concerns regarding loss in animal weight due to temperature.

With regard to the comments on maintenance work, except for emergencies, live poultry dealers do not perform maintenance or repair work on trucks or trailers in the time between taking the tare and gross weights. Typically, truck repair and fabrication work does not take place near areas where live poultry is handled. Because unscheduled maintenance and repair work on trucks and trailers can result in costly delays to the operations of the processing plants, we do not believe that this is either a significant or a recurring problem in the industry, and are therefore making no change to this final rule based on this comment.

The 13 of these commenters further recommended that we require live poultry dealers to disconnect trailers from the trucks before obtaining gross and net weights. Many live poultry dealers weigh trucks and trailers before leaving the plant, prior to loading the poultry, and use a mathematical formula to account for fuel use during the trip. The commenters said that they would accept weighing of the truck and trailer together if differences in fuel levels were accounted properly. Since our investigators routinely examine fuel formulas to verify proper fuel adjustments, and we have not found that a significant or recurring problem exists in this area, we are making no change to the final rule based on these comments.

The 13 commenters also requested that, for the accurate weighing of poultry, we require that scales be balanced before every load, instead of once per day. Our proposed amendment to § 201.108–1(a) requires that scales be balanced each day before weighing begins and then verified throughout the day prior to each weighing of poultry or feed. Our proposal also requires that the weigher verify that the scales register a zero balance upon returning to the scales following his/her absence from the scale. We believe that our use of the

word “verified” may have been understood to mean a visual check of the balance condition of the scale made without documentation of the balance condition. Therefore, in this final rule, we are deleting the word “verified” from the second sentence of § 201.108–1(a)(1), and revising it to state that the scale is to be balanced at the time any poultry or feed is weighed. We are also merging the third sentence with the contents of the second sentence in the same section to make clear that documentation of the zero balance and the time and date of balancing must be done at the time any poultry or feed is weighed. By adding the contents of the third sentence to the second sentence, we are deleting the phrase “or its zero balance shall be verified” to make it clear that we are requiring scales be balanced and that the balance condition be documented for every instance that a load of poultry or feed is weighed, and not just once per day. We are also making similar revisions to § 201.108–1(c)(1)(v)–(c)(1)(vi) in this final rule for the same reason.

All 13 commenters asked that we not permit the delivery of split loads of feed (feed for more than one grower on a single truck) unless the truck has an on-board scale and weighing system, specifically when feed is taken from one farm directly to another. Currently, § 201.55(a) of the regulations requires that the actual weight be obtained for all feed delivered to a livestock or poultry grower. This means that live poultry dealers and swine contractors may either weigh and place feed on a truck in a separate bin for each producer or grower, or use a truck with an on-board scale and weighing system, when delivering feed to multiple producers or growers. Although the current regulations allow mutually agreed upon estimated weights be applied to feed that is picked up from a grower, that same feed may not be delivered to another farm on the basis of estimated weight according to § 201.55(a) and (b) because actual weight is required. Feed picked up from one livestock producer or poultry grower must be weighed on a certified scale (via an on-board system or otherwise) before being delivered to another producer or grower. Because we are not requiring that live poultry dealers or swine contractors use on-board systems, we are making no change to this final rule based on these comments.

Thirteen additional individuals representing four poultry companies, four poultry associations and one lending institution responded to the proposed rule. The following discussion addresses their comments.

Two commenters stated that their firm would have to employ someone to program the firm's computer system to print a zero balance scale ticket. They also stated that their poultry firm would need to hire a dispatcher if a zero balance had to be printed prior to loading. Presently, the company's feed truck drivers confirm visually that a feed scale registers a zero balance on a "scoreboard" before driving the truck onto a scale. The driver then immediately records in writing his/her visual observation of the scale's zero balance.

In the proposed rule, we added a sentence to § 201.108-1(a)(1) requiring that the time and date the empty poultry or feed scale was balanced be mechanically printed on the scale ticket or other basic transaction record along with the zero balance. We are adding similar wording to § 201.49, which provides the requirements for recording evidence of livestock, live poultry, and feed weighing. GIPSA believes that hand recorded notes used to verify the zero balance of weight scales are undependable and should not be relied upon in determining payment to a livestock producer or poultry grower.

One live poultry dealer argued that documenting the time and date of zero balances was sufficient and did not see the need to print a zero balance on the scale tickets. As we stated previously, hand written notes used to verify the zero balance of weight scales are undependable and should not be relied upon when determining payment to a livestock producer or poultry grower. GIPSA believes that livestock producers and poultry growers cannot reasonably be assured that a scale was balanced properly prior to the start of the weighing process unless a zero balance is printed mechanically on the scale ticket. We estimate there are about 230 feed scales in the U.S. that are used to weigh feed for delivery to livestock producers or poultry growers. Based on GIPSA's industry experience, 30 percent or more of all feed scales can print a zero balance on the same scale ticket as the tare and gross weight amounts.

Costs involved in bringing the other 70 percent of printers into compliance may vary. Some systems may require minor alteration to permit the printer to print a zero balance on the scale ticket along with the tare and gross weight.

Other systems may require a reprogramming of the computer system controlling the printer. In these cases, an independent scale company will likely have to do the reprogramming. In some cases the manufacturer will likely have to do the reprogramming. In researching this issue, we contacted six

scale manufacturers, two scale software program developers and two scale dealers that also upgrade and service existing livestock, poultry and feed scales. All are prominent in their field and operate on at least a national, if not international level. They estimated that the cost to modify scale settings or alter a scale program would generally vary in a range of a few hundred dollars for the time and effort involved in having a scale dealer make on-site adjustments. If individual scales require new programming to print the zero balance on the same ticket as the tare and gross, the scale manufacturers estimated that the costs could range from \$1,000 to \$3,000. Software developers estimated that costs could range from \$2,000 for a partial reprogramming to \$5,000 to \$10,000 for a full reprogramming. Among all the firms as a whole, \$1,500 appeared to be a reasonable overall average cost. If this is the case, GIPSA estimates that the total cost to the industry would be approximately \$362,250. We believe that this cost is negligible in comparison to the overall annual volume of poultry produced in the U.S. (more than 43 billion pounds in 2012).<sup>1</sup> GIPSA believes that printing a zero balance on the scale ticket along with the gross, and if appropriate, tare weight, will ensure that the poultry grower receives documentation showing the verification of the zero balance condition of the scale at the time of weighing.

Another live poultry dealer stated that it would not be feasible to print zero balances between obtaining the tare weight and the gross weight for feed placed on a load. In addition, a swine trade association asked that we clarify what we mean by "zero balance for both the tare and gross weights" for feed scale tickets. In our proposed rule, we proposed amending § 201.49(d)(5) to require that scale tickets showing the weighing of feed include "the zero balance for both the gross and tare, when applicable." In our proposal, we did not intend to require separate zero balances between obtaining each tare weight and each gross weight, nor did we intend to require a zero balance between obtaining tare and gross weights of feed when the truck and trailer do not move off the scale once the tare weight is obtained and loading begins. Weighers must ensure that the certified scale registers a zero balance prior to beginning the weighing process. Typically, one zero balance documented on a scale ticket along with the tare and

gross weight for the grower or truckload is sufficient. If the truck is moved from one scale to another scale to complete the weighing process a separate zero balance must be recorded for the tare and gross weights. Once the scale registers a zero balance, a truck/trailer may be driven onto the scale to obtain the tare or gross weights of the truck/trailer and the load. Again, GIPSA believes that the beginning zero balance, along with the tare and gross weights of the load, must be printed on the scale ticket so that livestock producers and poultry growers have documentation of the zero balance condition of the scale at the time that the weighing process occurred.

Given the preceding discussion, GIPSA will delete the phrase "for both the gross and tare" from § 201.49(d)(5) in this final rule, stating only that a zero balance must be printed on the scale ticket or other basic transaction record. There will be one exception made in this final rule, however, for vehicle scales when feed for more than one producer or grower is loaded into a multi-compartment feed truck. In this case, the gross weight of the feed for the initial producer or grower may be used as the tare weight for the feed loaded for the next grower. This process must be repeated until the loading of feed into the truck is complete. A zero balance must appear on the scale ticket or basic transaction record for the first load of feed, but not on the ticket or record for subsequent loads of feed on the same truck. We will add wording to § 201.49(d)(5) in this final rule to address this exception. Since these changes address all the situations where printing the zero balance for both the tare and gross might not be applicable, we are also deleting the phrase "when applicable" from § 201.49(d)(5) and § 201.49(d)(6) in this final rule.

In § 201.49(a) of the proposed rule, we required that unused and partially executed scale tickets be secured under lock or made inaccessible to other parties, which is a general rule applicable to livestock, poultry and feed scales. One comment received from a poultry company stated, however, that feed truck drivers are often weighers and must weigh their own loads. Drivers come and go from feed mills at any time of day and therefore, the scale tickets must be readily accessible to those drivers each day. The commenter stated that unused tickets secured in a locked compartment or in an area inaccessible to other parties is impractical. We believe that unused scale tickets must be secured to prevent unauthorized access and/or theft. Feed mills, however, typically restrict access to

<sup>1</sup> World Agricultural Supply and Demand Estimates, World Agricultural Outlook Board, USDA, WASDE-518, pg. 32.

both the weighing controls and scale tickets so that only authorized individuals are weighing and loading feed. We believe that in a feed mill setting, unused and partially executed scale tickets are typically kept in a secure environment. We will therefore revise § 201.49(a) in this final rule in response to this comment to exempt feed mills from the requirement that they keep scale tickets under lock when the weigher is not at the scale.

We received a comment submitted by a trade association that focused on our proposal to amend § 201.49 to require that scale tickets for feed weight also show the name and address of a livestock producer. The trade association said that swine contractors often use assumed names for producers on the scale tickets that do not identify the producer by name. Because the true name of a producer can be determined from the swine contractor's business records, the trade association preferred that we allow the use of common names. We currently allow the use of assumed names, codes or numbers on scale tickets that reveal the identity of sellers and buyers of livestock, provided that the formal names can be accessed from the records of the issuer of the tickets. Under these circumstances, we will therefore revise § 201.49(d)(2) in the final rule by adding the phrase “. . . or a designation by which they may be readily identified.” For consistency, we will also add this same phrase to the end of § 201.49(c)(3) in the final rule.

The trade association also stated that the requirement that scale tickets contain the location of the scale (proposed § 201.49(c)(5) & (d)(4)) is imprecise. They suggested we specify that we meant the address and physical location of a scale, especially if there is more than one scale at that address. To address this concern, we will modify § 201.49(d)(4) in this final rule to require that scale tickets show “The city and state in which the scale is located, and, if a facility has more than one scale on which feed is weighed, the identity of the scale.” For consistency, we will revise similarly proposed § 201.49(c)(5) in this final rule. We believe these revisions sufficiently allow GIPSA personnel to locate the scale that produced a specific scale ticket.

The trade association further stated that some automated pork slaughtering plants do not have employees present to physically operate the monorail scale. They stated that the slaughtering plant employee who checks for the producer identification number tattooed on the carcass is the closest to a scale operator that many automated pork plants have. Section 201.49(a)(7) of the current

regulations requires that weighers be identified on scale tickets. This requirement pertains to the weighing of all livestock when being weighed for purchase or sale, etc., whether in automated pork plants or elsewhere. We agree with this comment, however, and will add wording to § 201.49(b)(7) in this final rule exempting automated livestock slaughtering plants from the requirement that scale tickets show the name, initials, or identification number of a weigher.

In the proposed rule, GIPSA added the terms “swine contractors” and “feed” to § 201.76 of the regulations. The trade association said that it would not be feasible to reweigh picked-up feed, feeder and weaner pigs and hog carcasses. They cited the impractical aspects of reweighing feed and pigs picked up from a grower's farm as well as bio-security concerns involved with hog carcasses in packing plants. Our proposed amendment to § 201.76 requires that swine contractors reweigh only feed and hog carcasses upon the request of GIPSA personnel, not feeder and weaner pigs from a grower's farm. Anytime the weight of delivered or returned feed is determined using a scale or by estimating, and the weight of feed is a factor in determining payment or settlement, GIPSA periodically requires that feed be reweighed to verify contract compliance and ensure proper payment to swine and poultry growers. We have requested the reweighing of hog carcasses at slaughter plants for many years. The carcasses are returned by rail to the hot weight scale before entering the cooler, or the chain is stopped and carcasses are transported back for placement on the hot weight scale for reweighing. This process does not require that carcasses be transported from the coolers to the hot weight scale. We believe that this process therefore eliminates the bio-security concerns raised by the trade association. Because the established reweighing procedures allow our personnel to verify that the weighing procedures used by swine contractors to weigh pigs and feed typically report weights accurately, we are making no change to the final rule based on the comment.

Further, in the preamble of our proposed rule, we also stated that “. . . feed for each grower be weighed on a certified scale and that a scale ticket be generated at the time the feed is picked up from each grower, before proceeding to another grower to pick up unused feed.” (73 FR 7687) While this statement was correct, the statement caused commenters to question whether we were changing the procedures for collecting and weighing unused feed

returned from poultry growers, which is covered by § 201.55 of the current regulations. In the preamble of our proposed rule, we addressed general procedures for weighing feed and for weighing feed being delivered to poultry growers. The only proposed amendment that specifically concerned unused feed is § 201.108–1(d)(3) and pertains to the printing of scale tickets when onboard weighing systems are used to pick up unused feed. Because the comments did not take issue with the proposed amendments to § 201.108–1(d)(3), however, we are making no changes in this final rule.

While there were several comments from poultry company representatives regarding the handling of unused feed that is not picked-up from growers, there are no regulations under the P&S Act that cover the handling of unused feed that is left on a farm. Because this issue is not addressed in our proposed amendments to the regulations, we are making no change to the final rule.

In § 201.108–1(a) of the final rule, we are also replacing the term “shall” with the term “must” everywhere the term “shall” appears in to make the terminology in § 201.108–1(b)(5) consistent with plain language guidelines. We are also deleting from the final rule the last sentence of proposed § 201.108–1(c)(1)(v), which reads “Further, the hopper must be empty and balanced at zero prior to each weighment.” With a hopper scale, it is possible that as many as 8 different printed weights can exist for an individual grower; therefore, there is no need for a zero balance between individual hopper loads for one grower. This sentence was part of an original draft of the regulatory text and inadvertently published as part of the proposed rule when it should not have been. In addition, in the first sentence of proposed § 201.49(b), the phrase “live or” was inadvertently deleted and will be added to the final rule for clarity. In proposed § 201.49(b), the word “by” in the phrase “by designation” is being deleted from the final rule for clarity since it redundant. Finally, in the third sentence of proposed § 201.82, the phrase “the gross weight includes, but is not limited to” is being revised in the final rule for clarity to read “the gross weight, which may include, but is not limited to . . . .”

#### **Executive Order 12866 and Regulatory Flexibility Act**

The Office of Management and Budget designated this rule as not significant for the purposes of Executive Order 12866.

We have determined that this final 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. 601–612). An initial regulatory flexibility analysis as described in 5 U.S.C. 605 of the Regulatory Flexibility Act is not required or provided here. This final rule directly affects companies in contractual relationships with swine production contract growers and poultry growers. Most of these entities are slaughterers and processors of swine or poultry with more than 500 employees and do not meet the applicable size standards for small entities presented in the Small Business Administration regulations (13 CFR 121.201). To the extent that this final rule does affect small entities, it will not impose substantial new expenses or changes to routine operations.

GIPSA believes that small swine production contract growers and poultry growers will benefit directly from this final rule, which will provide accurate and fair weighing of their inputs and outputs.

We have considered the effects of this final rule under the Regulatory Flexibility Act and we believe that it will not have a significant impact on a substantial number of small entities.

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have a retroactive effect. This final rule will not pre-empt State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments in this rule. The provisions of this final rule will not require administrative procedures be exhausted prior to judicial challenges.

#### Executive Order 13175

This final rule has been reviewed with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This rule will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

#### Paperwork Reduction Act

This final rule does not contain new information collection requirements or changes to existing information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### E-Government Act Compliance

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

#### List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Poultry and poultry products, Trade practices.

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

#### PART 201—[AMENDED]

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

Authority: 7 U.S.C. 181–229, 229c.

■ 2. Revise § 201.49 to read as follows:

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

(a) When livestock, poultry or feed is weighed for the purpose of purchase, sale, acquisition, or settlement, a scale ticket must be issued which must be serially numbered and used in numerical sequence. Sufficient copies must be executed and provided to all parties to the transaction. Unused and partially executed scale tickets must not be left exposed or accessible to other parties and, except in feed mills, must be kept under lock when the weigher is not at the scale. In instances where the weight values are automatically recorded directly on the account of purchase, account of sale, or other basic transaction record, this record may serve in place of a scale ticket.

(b) *Livestock.* When livestock is weighed for the purpose of purchase or sale, or when livestock is purchased on a carcass weight or carcass grade and weight basis, the live or hot carcass weights must be recorded using a scale equipped with a printing device, and such printed weights must be retained as part of the person or firm's business records to substantiate settlement on each transaction. In instances where the weight values are automatically recorded directly on the account of purchase, account of sale, or other basic transaction record, this record may serve in place of a scale ticket. Scale tickets or other basic transaction records issued under this section must show:

- (1) The name and location of the agency performing the weighing service;
- (2) The date of the weighing;
- (3) The name of the buyer and seller or consignor, or a designation by which they may be readily identified;

- (4) The number of head;
- (5) Kind of livestock;
- (6) Actual weight of each draft of livestock; and

(7) The name, initials, or identification number of the person who weighed the livestock, or if required by State law, the signature of the weigher, except for an automated weighing system where a weigher is not stationed at the scale.

(c) *Poultry.* When live poultry is weighed for the purpose of purchase, sale, acquisition, or settlement by a live poultry dealer, the scale ticket or other basic transaction record must show:

- (1) The name of the agency performing the weighing service;
- (2) The name of the live poultry dealer;
- (3) The name and address of the grower or seller, and purchaser, or a designation by which they may be readily identified;
- (4) The name, initials, or identification number of the person who weighed the poultry, or if required by State law, the signature of the weigher;
- (5) The city and state in which the scale is located, and, if more than one scale is used to obtain the weight of poultry within the same facility, the identity of the scale;
- (6) The zero balance for both the gross weight and tare weight;
- (7) The date and time zero balance was determined;
- (8) The gross weight, tare weight, and net weight;
- (9) The date and time gross weight and tare weight are determined;
- (10) The number of poultry weighed;
- (11) The weather conditions;
- (12) Whether the driver was on or off the truck at the time of weighing, if applicable; and
- (13) The license number or other identification numbers on the truck and trailer, if weighed together, or trailer if only the trailer is weighed; *provided*, that when live poultry is weighed on a scale other than a vehicle scale, the scale ticket or other basic transaction record need not show the information specified in paragraphs (c)(11) and (c)(12) of this section.

(d) *Feed.* Whenever feed is weighed and the weight of the feed is a factor in determining payment or settlement to a livestock producer or poultry grower, the scale ticket or other basic transaction record must show:

- (1) The name of the agency performing the weighing service, or the name and location of the firm responsible for supplying the feed;
- (2) The name and address of the livestock producer or poultry grower, or a designation by which they may be readily identified;

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

(4) The city and state in which the scale is located, and, if a facility has more than one scale on which feed is weighed, the identity of the scale;

(5) The zero balance; *provided* that when using a vehicle scale to weigh feed for more than one producer or grower on the same multi-compartment truck, the preceding producer's or grower's gross weight can be used for the next producer's or grower's tare weight without printing a zero balance, and repeated until the unit is full;

(6) The date and time zero balance was determined;

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

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

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

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

(11) 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.

■ 3. Revise § 201.76 to read as follows:

**§ 201.76 Reweighing.**

Stockyard owners, market agencies, dealers, packers, swine contractors and live poultry dealers must reweigh livestock, livestock carcasses, and live poultry or feed on request of any authorized representative of the Secretary.

■ 4. Revise § 201.82 to read as follows:

**§ 201.82 Care and promptness in weighing and handling livestock and live poultry.**

(a) Each stockyard owner, market agency, dealer, packer, swine contractor and live poultry dealer must exercise reasonable care and promptness with respect to loading, transporting, holding, yarding, feeding, watering, weighing, or otherwise handling livestock, or live poultry to prevent waste of feed, shrinkage, injury, death or other avoidable loss.

(b) Whenever live poultry is obtained under a poultry growing arrangement and the weight of the live poultry is a factor in calculating payment to the grower, the poultry must be transported promptly after loading. The process of obtaining the gross weight must

commence immediately upon arrival at the processing plant, holding yard, or other scale normally used for such purpose. The process of obtaining the gross weight which may include, but is not limited to, fueling, uncoupling the trailer, changing the road tractor to a yard tractor or weighing the trailer only, must be conducted without delay; *specifically*, the time period between arrival and completion of the process of obtaining the gross weight must not exceed thirty (30) minutes.

(c) Live poultry dealers must not place poultry from multiple growers on a single live poultry transport trailer or other live poultry transport equipment, creating what is commonly referred to as a "split load."

■ 5. Amend § 201.108-1 to:

■ a. Revise the heading;

■ b. Revise the first sentence of the introductory text;

■ c. Revise paragraph (a)(1);

■ d. Remove paragraph (a)(7);

■ e. Add paragraphs (c)(1)(v) and (vi);

■ f. Add paragraph (d)(3);

■ g. Remove paragraph (e)(2) and redesignate paragraphs (e)(3) and (4) as paragraphs (e)(2) and (3).

**§ 201.108-1 Instructions for weighing live poultry or feed.**

Live poultry dealers who operate scales on which live poultry or feed is weighed for purposes of purchase, sale, acquisition, or settlement are responsible for the accurate weighing of such poultry or feed. \* \* \*

(a) \* \* \* (1) The scale must be maintained in zero balance at all times. The empty scale must be balanced each day before weighing begins and thereafter the scale must be balanced; and the zero balance, the time and date the empty scale was balanced must be mechanically printed on the scale ticket or other basic transaction record before any poultry or feed is weighed. In addition, the zero balance of the scale must be verified whenever a weigher resumes weighing duties after an absence from the scale.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(v) A feed hopper attached to an electronic digital scale must be empty of feed and the electronic digital scale must be balanced at zero prior to first weighing for each grower or per truckload, whichever is applicable. The date and time that the empty hopper scale is balanced with proof of the zero balance must be mechanically printed on the scale ticket or other permanent record that must be attached to the grower's copy of the scale ticket.

(vi) An onboard weighing system must be level and locked in position

and zero balanced prior to weighing. The date and time the onboard scale is balanced with proof of the zero balance must be mechanically printed on the scale ticket or other permanent record that must be attached to the grower's copy of the scale ticket. When more than one grower's feed is weighed, the preceding grower's gross weight can be used for the next grower's tare weight, and can be repeated until the unit is full.

\* \* \* \* \*

(d) \* \* \*

(3) When returned feed from a contract poultry grower is picked up and weighed on an onboard weighing system, the weight of the feed must be recorded and a ticket printed. That weight must be used as the tare weight when feed from another contract poultry grower is picked up on the same load. The procedure must be followed each time another grower's feed is added to the load.

\* \* \* \* \*

**Marianne Plaus,**

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

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 161**

[Docket No. USCG-2011-1024]

RIN 1625-AB81

**Vessel Traffic Service Updates, Including Establishment of Vessel Traffic Service Requirements for Port Arthur, Texas and Expansion of VTS Special Operating Area in Puget Sound**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is revising and updating the Vessel Traffic Service (VTS) regulations in 33 CFR Part 161. The revision makes participation in the VTS in Port Arthur, TX mandatory and expands it to include Lake Charles, LA; consolidates and expands a VTS Special Area in Puget Sound, WA; adds the designated frequencies for the Maritime Mobile Service Identifiers (MMSIs) for Louisville, KY and Los Angeles/Long Beach, CA; and updates the definitions and references in Sailing Plan requirements. The changes made by this rule will align regulations with the current operating procedures of the