

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580-AB09

Scales; Accurate Weights, Repairs, Adjustments or Replacements After Inspection

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

ACTION: Proposed rule.

SUMMARY: We are proposing to amend one section of the regulations under the Packers and Stockyards Act (P&S Act) to incorporate by reference the 2009 edition of the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," and to require that 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 meet applicable requirements of the 2009 NIST Handbook 44. Additionally, we are proposing to amend that section of the regulations to add "swine contractors" to the list of regulated entities to which the section applies.

DATES: We will consider comments we receive by July 14, 2009.

ADDRESSES: We invite you to submit comments on this proposed rule. You may submit comments by any of the following methods:

- *E-Mail:* comments.gipsa@usda.gov.
- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643-S, Washington, DC 20250-3604.
- *Fax:* (202) 690-2173.
- *Hand Delivery or Courier:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643-S, Washington, DC 20250-3604.

• *Internet:* Go to <http://www.regulation.gov>. Follow the on-line instruction for submitting comments.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register**. Regulatory analyses and other documents relating to this action will be available for public inspection in Room 1643-S, 1400 Independence Avenue, SW., Washington, DC 20250-3604 during regular business hours. All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call GIPSA's Management Support Staff at (202) 720-7486 to arrange a public inspection of comments received.

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

The Grain Inspection, Packers and Stockyards Administration (GIPSA), enforces the P&S Act (7 U.S.C. 181 *et seq.*). Under authority granted to us by the Secretary of Agriculture (Secretary), we are authorized (7 U.S.C. 228) to create those regulations necessary to carry out the provisions of the P&S Act that specify requirements for regulated entities that purchase livestock or poultry.

The regulations under the P&S Act have specific requirements for (1) scales that regulated entities use for weighing livestock, poultry or feed and (2) packers purchasing livestock on a carcass grade, weight, or grade and weight basis.

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) (Act) amended the P&S Act to add "swine contractor" as a regulated entity. Section 10502 of the Act defined swine contractor as "any person engaged in the business of obtaining swine under a swine production contract for the purpose of slaughtering the swine or selling the swine for slaughter, if (a) the swine is obtained by the person in commerce; or (b) the swine (including products from the swine) obtained by the person is sold or shipped in commerce."

Adding "swine contractor" to specific sections of the regulations would dispel any confusion among swine contractors regarding which regulations under the P&S Act are applicable to them. It would also allow GIPSA to more easily identify and enforce violations of the P&S Act.

Description of Proposed Changes

We propose to amend Section 201.71 of the regulations under the P&S Act (9 CFR 201.71) to incorporate by reference the 2009 edition of NIST Handbook 44. We would also provide instructions on how to obtain copies of the handbook, which includes updated standards for operating, maintaining, and testing scales and standards for electronic devices.

We also propose to revise this section of the regulations by adding the term "swine contractors," as follows:

- § 201.71(a) would state that swine contractors must operate, maintain, and test scales according to the requirements of the 2009 edition of Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices;
- § 201.71(b) would require swine contractors to use scales equipped with a printing device which shall record weight values on a scale ticket or other document; and
- § 201.71(d) would require swine contractors to use only scales that are found, upon testing and inspection, to be in a condition to give accurate weights.

The proposed changes to add swine contractor as a regulated entity would make this section consistent with other regulations under the P&S Act regarding regulated entities that have been amended to include swine contractors.

Options Considered

We considered the option of not adding swine contractors to the regulations; we would continue to protect the interest of swine producers indirectly through regulation of packers, dealers, and market agencies. That option, however, is contrary to the intent of Congress, which amended the P&S Act to give GIPSA specific authority over swine contractors. We also considered not revising the regulations under the P&S Act regarding the standards for operating, maintaining, and testing scales and

standards for electronic devices. Choosing this option, however, would not provide up-to-date standards for electronic devices as new technology emerges, nor would it provide consistency with the standards imposed by the States' departments of weights and measures.

Effects on Regulated Entities

This proposed rule would make it clear that swine contractors as well as other regulated entities must operate, maintain, and test scales according to the requirements of the 2009 edition of NIST Handbook 44 and to use scales in good condition and equipped with a printing device to record weight values. Since regulated entities are required under State law to comply with NIST Handbook 44, there would be no new costs or burden to comply.

Executive Order 12866 and Regulatory Flexibility Act

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

We have determined that this proposed 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.*). While this proposed rule would affect swine contractors, most such entities do not meet the definition for small entities in the Small Business Act (13 CFR 121.201). Therefore, we are not providing an initial regulatory flexibility analysis.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. This rule 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.

Paperwork Reduction Act

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It does not involve collection of new or additional information by the federal government.

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

Swine, Hogs, Livestock, Measurement standards.

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

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

1. Revise the authority citation for part 201 to read as follows:

Authority: 7 U.S.C. 181–229c.

2. In § 201.71, paragraphs (a), (b) and (d) are revised to read as follows:

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

(a) All scales used by stockyard owners, swine contractors, 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, Scales Code, and Weights Code of the 2009 edition of the 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 [INSERT EFFECTIVE DATE OF FINAL RULE], 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**. The handbook is for sale by the National Conference of Weights & Measures (NCWM), 1135 M Street, Suite 110, Lincoln, Nebraska 68508. Information on these materials may be obtained from NCWM by calling 402-434-4880, by e-mailing nfo@ncwm.net, or on the Internet at <http://www.nist.gov/owm>.

(b) All scales used by stockyard owners, swine contractors, 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.

* * * * *

(d) No scales shall be operated or used by any stockyard owners, swine contractors, market agencies, dealers, packers, or live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the 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 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.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 913

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1204

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1702

RIN 2590-AA07

Privacy Act Implementation

AGENCIES: Federal Housing Finance Board; Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing a regulation providing the procedures and guidelines under which it will implement the Privacy Act of 1974, as amended. The proposed regulation describes the policies and procedures whereby individuals may obtain notification of whether an FHFA system