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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: Final rule.

SUMMARY: The Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending 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 edition of NIST Handbook 44. GIPSA is also amending that section of the regulations to add "swine contractors" to the list of regulated entities to which the section applies.

DATES: Effective November 19, 2009. The incorporation by reference of a certain publication listed in this rule is effective as of November 19, 2009.

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 enforces the P&S Act, as amended (7 U.S.C. 181 *et seq.*). The Secretary of Agriculture, is authorized (7 U.S.C. 228) to issue regulations necessary to carry out the provisions of the P&S Act.

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."

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

Notice of Proposed Rulemaking and Final Action

GIPSA published a Notice of Proposed Rulemaking in the **Federal Register** (74 FR 22841) on May 15, 2009, seeking comments on amending the regulations issued under the P&S Act to do the following: (1) 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;" (2) 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; and, (3) add "swine contractors" to the list of

regulated entities to which the section applies. Because GIPSA received no comments on the proposed rule during the 60-day comment period, which ended on July 14, 2009, we are amending § 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 are also amending § 201.71(a) to 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. In addition, we are amending § 201.71(b) to require that swine contractors use scales equipped with a printing device, which shall record weight values on a scale ticket or other document. Finally, we are amending § 201.71(d) to require that swine contractors use only scales that are found, upon testing and inspection, to be in a condition to give accurate weights.

GIPSA believes that adding "swine contractor" as a regulated entity to section 201.71 makes that section of the regulations 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 while continuing to protect their interests indirectly through the regulation of packers, dealers, and market agencies. We determined that this option, however, was 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. We determined that this option, however, would not provide up-to-date standards under the P&S regulations 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 final rule makes 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 use scales that are 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 are 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.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), GIPSA has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS).¹ This final rule affects swine contractors, most of which are either slaughterers or processors of swine with more than 500 employees (NAICS code 311611), or are producers with more than \$750,000 in annual sales (NAICS code 112210), and do not meet the applicable size standards for small entities under the Small Business Act (13 CFR 121.201). Therefore, 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 RFA and are not providing an initial regulatory flexibility analysis.

Executive Order 12988

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

Paperwork Reduction Act

This final 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, Incorporation by reference.

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

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for part 201 continues 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 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**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For more information on the availability of this material at NARA, call 202–741–6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Also, it is available for inspection at USDA, GIPSA, P&SP,

1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363. 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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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0020]

RIN 1904–AC09

Energy Conservation Program: Repeal of Test Procedures for Televisions

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) repeals the regulatory

¹ See: http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_std_tablepdf.pdf.