

from the seller of the livestock any compensation in the form of commission, yardage, or other service charge unless the charge is for services mandated by law or statute and is not inconsistent with the provisions of the Act.

[61 FR 36282, July 10, 1996]

§ 201.99 Purchase of livestock by packers on a carcass grade, carcass weight, or carcass grade and weight basis.

(a) Each packer purchasing livestock on a carcass grade, carcass weight, or carcass grade and weight basis shall, prior to such purchase, make known to the seller, or to his duly authorized agent, the details of the purchase contract. Such details shall include, when applicable, expected date and place of slaughter, carcass price, condemnation terms, description of the carcass trim, grading to be used, accounting, and any special conditions.

(b) Each packer purchasing livestock on a carcass grade, carcass weight, or carcass grade and weight basis, shall maintain the identity of each seller's livestock and the carcasses therefrom and shall, after determination of the amount of the purchase price, transmit or deliver to the seller, or his duly authorized agent, a true written account of such purchase showing the number, weight, and price of the carcasses of each grade (identifying the grade) and of the ungraded carcasses, an explanation of any condemnations, and any other information affecting final accounting. Packers purchasing livestock on such a basis shall maintain sufficient records to substantiate the settlement of each transaction.

(c) When livestock are purchased by a packer on a carcass weight or carcass grade and weight basis, purchase and settlement therefor shall be on the basis of carcass price. This paragraph does not apply to purchases of livestock by a packer on a guaranteed yield basis.

(d) Settlement and final payment for livestock purchased by a packer on a carcass weight or carcass grade and weight basis shall be on actual hot weights. The hooks, rollers, gambrels or other similar equipment used at a packing establishment in connection

with the weighing of carcasses of the same species of livestock shall be uniform in weight. The tare shall include only the weight of such equipment.

(e) Settlement and final payment for livestock purchased by a packer on a USDA carcass grade shall be on an official (final—not preliminary) grade. If settlement and final payment are based upon any grades other than official USDA grades, such other grades shall be set forth in detailed written specifications which shall be made available to the seller or his duly authorized agent. For purposes of settlement and final payment for livestock purchased on a grade or grade and weight basis, carcasses shall be final graded before the close of the second business day following the day the livestock are slaughtered.

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

(Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.); 7 U.S.C. 222 and 228 and 15 U.S.C. 46)

[33 FR 2762, Feb. 9, 1968, as amended at 33 FR 5401, Apr. 5, 1968; 49 FR 37375, Sept. 24, 1984; 54 FR 37094, Sept. 7, 1989; 68 FR 75388, Dec. 31, 2003]

POULTRY—PACKERS AND LIVE POULTRY DEALERS

§ 201.100 Records to be furnished poultry growers and sellers.

(a) *Contracts; contents.* Each live poultry dealer who enters into a growout (feeding) contract with a poultry grower shall furnish the grower a true written copy of the contract, which shall clearly specify:

(1) The duration of the contract and conditions for the termination of the contract by each of the parties; and

(2) All terms relating to the payment to be made to the poultry grower, including among others, where applicable, the following:

(i) The party liable for condemnations, including those resulting from plant errors;

(ii) The method for figuring feed conversion ratios;

(iii) The formula or method used to convert condemnations to live weight;

(iv) The per unit charges for feed and other inputs furnished by each party; and

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(v) The factors to be used when grouping or ranking poultry growers.

(b) *Settlement sheets; contents; supporting documents.* Each live poultry dealer, who acquires poultry pursuant to a contract with a poultry grower, shall prepare a true and accurate settlement sheet (final accounting) and furnish a copy thereof to the poultry grower at the time of settlement. The settlement sheet shall contain all information necessary to compute the payment due the poultry grower. For all such arrangements in which the weight of birds affects payment, the settlement sheet shall show, among other things, the number of live birds marketed, the total weight and the average weight of the birds, and the payment per pound.

(c) *Condemnation and grading certificates.* Each live poultry dealer, who acquires poultry pursuant to a contract with a poultry grower which provides that official U.S. Department of Agriculture condemnations or grades, or both, are a consideration affecting payment to the grower, shall obtain an official U.S. Department of Agriculture condemnation or grading certificate, or both, for the poultry and furnish a copy thereof to the poultry grower prior to or at the time of settlement.

(d) *Grouping or ranking sheets.* Where the contract between the live poultry dealer and the poultry grower provides for payment to the poultry grower based upon a grouping or ranking of poultry growers delivering poultry during a specified period, the live poultry dealer shall furnish the poultry grower, at the time of settlement, a copy of a grouping or ranking sheet which shows the grower's precise position in the grouping or ranking sheet for that period. The grouping or ranking sheet need not show the names of other growers, but shall show the actual figures upon which the grouping or ranking is based for each grower grouped or ranked during the specified period.

(e) *Live poultry purchases.* Each live poultry dealer who purchases live poultry shall prepare and deliver a purchase invoice to the seller at time of settlement. The purchase invoice shall contain all information necessary to compute payment due the seller. When U.S. Department of Agriculture con-

demnations or U.S. Department of Agriculture grades, or both, of poultry purchased affect final payment, copies of official U.S. Department of Agriculture condemnation certificates or grading certificates, or both, shall be furnished to the seller at or prior to the time of settlement.

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

[54 FR 16356, Apr. 24, 1989; 54 FR 18713, May 2, 1989, as amended at 68 FR 75388, Dec. 31, 2003]

EFFECTIVE DATE NOTE: At 74 FR 63277, Dec. 3, 2009, § 201.100 was amended by redesignating paragraphs (a), (b), (c), (d), and (e) as (c), (d), (e), (f) and (g); adding new paragraphs (a), (b), (c)(3), and (h); removing "and" at the end of newly designated paragraph (c)(1), removing "." at the end of newly designated paragraph (c)(2)(v), adding ";" and "and" at the end of newly designated paragraph (c)(2)(v), and revising the introductory text of newly designated paragraph (c), effective Jan. 4, 2010. For the convenience of the user, the added and revised text is set forth as follows:

§ 201.100 Records to be furnished poultry growers and sellers.

(a) *Poultry growing arrangement; timing of disclosure.* As a live poultry dealer who offers a poultry growing arrangement to a poultry grower, you must provide the poultry grower with a true written copy of the offered poultry growing arrangement on the date you provide the poultry grower with poultry house specifications.

(b) *Right to discuss the terms of poultry growing arrangement offer.* As a live poultry dealer, notwithstanding any confidentiality provision in the poultry growing arrangement, you must allow poultry growers to discuss the terms of a poultry growing arrangement offer with:

- (1) A Federal or State agency;
- (2) The grower's financial advisor or lender;
- (3) The grower's legal advisor;
- (4) An accounting services representative hired by the grower;
- (5) Other growers for the same live poultry dealer; or
- (6) A member of the grower's immediate family or a business associate. A business associate is a person not employed by the grower, but with whom the grower has a valid business reason for consulting with when entering into or operating under a poultry growing arrangement.

(c) *Contracts; contents.* Each live poultry dealer that enters into a poultry growing arrangement with a poultry grower shall furnish the grower with a true written copy of

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the poultry growing arrangement, which shall clearly specify:

* * * * *

(3) Whether a performance improvement plan exists for that grower, and if so specify any performance improvement plan guidelines, including the following:

- (i) The factors considered when placing a poultry grower on a performance improvement plan;
- (ii) The guidance and support provided to a poultry grower while on a performance improvement plan; and
- (iii) The factors considered to determine if and when a poultry grower is removed from the performance improvement plan and placed back in good standing, or when the poultry growing arrangement will be terminated.

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(h) *Written termination notice; furnishing, contents.*

(1) A live poultry dealer that ends a poultry growing arrangement with a poultry grower due to a termination, non-renewal, or expiration and subsequent non-replacement of a poultry growing arrangement shall provide the poultry grower with a written termination notice at least 90 days prior to the termination of the poultry growing arrangement. Written notice issued to a poultry grower by a live poultry dealer regarding termination shall contain the following:

- (i) The reason(s) for termination;
- (ii) When the termination is effective; and
- (iii) Appeal rights, if any, that a poultry grower may have with the live poultry dealer.

(2) A live poultry dealer's poultry growing arrangement with a poultry grower shall also provide the poultry grower with the opportunity to terminate its poultry growing arrangement in writing at least 90 days prior to the termination of the poultry growing arrangement.

§ 201.108-1 Instructions for weighing live poultry.

Live poultry dealers who operate scales on which live poultry is weighed for purposes of purchase, sale, acquisition, or settlement are responsible for the accurate weighing of such poultry. They shall supply copies of the instructions in this section to all persons who perform weighing operations for them and direct such persons to familiarize themselves with the instructions and to comply with them at all times. This section shall also apply to any additional weighers who are employed at

any time. Weighers must acknowledge their receipt of these instructions and agree to comply with them by signing in duplicate, a form provided by the Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration. One copy of this form is to be filed with a regional office of the Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration and the other copy retained by the Agency employing the weighers. The following instructions shall be applicable to the weighing of live poultry on all scales, except that paragraph (c)(1) of this section is only applicable to the weighing of live poultry on vehicle scales.

(a) *Balancing the empty scale.* (1) The scale shall be maintained in zero balance at all times. The empty scale shall be balanced each day before weighing begins and thereafter its zero balance shall be verified before any poultry is weighed. In addition, the zero balance of the scale shall be verified whenever a weigher resumes weighing duties after an absence from the scale.

(2) Before balancing the empty scale, the weigher shall notify parties outside the scale house of his/her intention and shall be assured that no persons or vehicles are in contact with the platform. When the empty scale is balanced and ready for weighing, the weigher shall so indicate by appropriate signal.

(3) Weighbeam scales shall be balanced by first seating each poise securely in its zero notch and then moving the balance ball to such position that a correct zero balance is obtained. A scale equipped with a balance indicator is correctly balanced when the indicator comes to rest in the center of the target area. A scale not equipped with a balance indicator is correctly balanced if the weighbeam, when released at the top or bottom of the trig loop, swings freely in the trig loop in such manner that it will come to rest at the center of the trig loop.

(4) Dial scales shall be balanced by releasing all drop weights and operating the balance ball or other balancing device to obtain a correct zero balance. The indicator must visibly indicate zero on the dial reading face and