

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 0590-AA09

Regulations and Statements of General Policy Issued Under the Packers and Stockyards Act: Scales & Weighing, Restrictions of Competition, Records, Packer Financial, Packer-Custom Feeding and Dealer/Order Buyer Arrangements, Meat Packer Sales and Purchase Contracts, Gifts to Government Employees, and Packer/Dealer Service Charges

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

ACTION: Proposed rules; review of existing regulations.

SUMMARY: The Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, is currently reviewing all regulations and policy statements issued under the provisions of the Packers and Stockyards (P&S) Act. Review of 20 regulations and statements of general policy, which have been identified as Group II, has been completed. As a result of the review, this document proposes to modify six trade practice regulations and retain seven regulations and seven statements of general policy in their present form.

DATES: Comments must be submitted on or before August 4, 1995.

ADDRESSES: Comments may be mailed to the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, Room 3039 South Building, U.S. Department of Agriculture, Washington, D.C. 20250-2810. Comments received may be inspected during normal business hours in the Office of the Deputy Administrator.

FOR FURTHER INFORMATION CONTACT: Dan VanAckeren, Acting Director, Livestock Marketing Division, (202) 720-6951, or

Tommy Morris, Director, Packer and Poultry Division, (202) 720-7363.

SUPPLEMENTARY INFORMATION: Advance Notice of Proposed Rulemaking was published in the **Federal Register** (57 FR 42515) on September 15, 1992. Comments were solicited, at that time, concerning the relevance and importance of each regulation and statement of general policy to today's livestock, meat, and poultry industries, and which sections should be retained, modified or removed. To complete the review process, the rules covered by the Advance Notice of Proposed Rulemaking were divided into three groupings and this document relates to those rules identified as Group II.

In response to a request for comments in the Advance Notice of Proposed Rulemaking, the Agency received a total of fourteen comments relating to the rules in Group II. Comments were received from five livestock producer and trade associations, two legal service groups representing producer and poultry grower associations, four poultry grower associations, two livestock marketing interests, and one livestock auction market.

Six comments were received recommending modification of § 201.49. This regulation requires that interested parties be furnished certain specified information in transactions that are based on the weight of livestock and live poultry. The generation, distribution, and maintenance of scale tickets is a necessary part of this process. One comment recommended a modification to the current regulations to specify that all scales, including those used to purchase livestock on a dressed weight basis, be equipped with printing devices. Five comments recommended that the current regulations be modified to require that scale tickets, similar to those required for livestock and poultry, be made a requirement for poultry feed delivered to growers where feed weight is part of the grower's compensation formula. The commentors proposed that the feed scale printing device print the time and date on the ticket. These same five commentors also recommended a modification to the existing regulations to emphasize the civil penalties of up to \$10,000 per livestock weighing offense that are currently available under section 203 of the P&S Act (7 U.S.C 193).

The same six commentors also proposed revision of § 201.71 which requires that all scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers be installed, maintained, and operated to insure accurate weights and requires that all scales used to weigh livestock and live poultry, with the exception of monorail scales, be equipped with a printing device.

The Agency proposes to amend subsection (a) of § 201.49 by modifying the last sentence to specifically state that all scales used to purchase livestock on a dressed weight basis be equipped with printing devices. The Agency also proposes to amend subsection (b) of § 201.49 to require weighmaster identification on executed poultry scale tickets that is uniform with identification required by livestock weighers. The Agency is considering addressing the issue of poultry feed weighing where feed weight is a part of the grower's compensation formula under a separate rulemaking.

The Agency adopts standards, specifications, and tolerances as approved by the National Institute of Standards and Technology (NIST) and printed in NIST Handbook 44. The Agency proposes to amend subsection (a) of § 201.71 to incorporate by reference the 1995 edition of NIST Handbook 44 to replace references to the currently adopted 1989 edition, as the 1995 handbook contains the most current standards, specifications, and tolerances approved by NIST. The Agency also proposes to amend subsection (b) of § 201.71 to specifically require that scales used to purchase livestock on a carcass weight basis be equipped with printing devices. The Agency is considering addressing the issue of poultry feed weighing where feed weight is a part of the grower's compensation formula under a separate rulemaking.

Section 201.55 requires that purchases and sales of livestock be made on the basis of actual weights and that any adjustments to the weights be fully and accurately explained on the accountings. The Agency proposes to amend § 201.55 by modifying the first sentence to include the purchase, sale, acquisition, and settlement of live poultry. This proposed change will provide uniform requirements for

livestock and live poultry. No comments were received concerning this section.

No comments were received concerning the modification of § 201.73-1. The Agency proposes a technical change to § 201.73-1 to more accurately reflect where forms are available and where they are to be filed.

Three comments were received concerning the modification of § 201.98. This regulation prohibits packers and dealers from charging commission, yardage, or other selling fees to livestock sellers. Of the three comments, one was received from each of the following: a trade association, a livestock auction market, and an agricultural cooperative. One comment recommended modifying the current regulation to exempt charges for services that are mandated by law or regulation from this prohibition. The other two comments recommended a modification that would only prohibit this practice if it resulted in anticompetitive behavior or was not disclosed to the seller.

The Agency proposes to amend § 201.98 by adding the wording, "unless the charge is for services mandated by law or statute", at the end of the last sentence of the regulation. This change would allow buyers to charge for services rendered at the time livestock is received, such as animal identification, provided the service is necessary to comply with statutory requirements.

No comments were received concerning the modification of § 201.108-1. This regulation consists of instructions for live poultry weighers that inform them of requirements and procedures which must be followed in order to assure accurate weighing of live poultry on vehicle scales.

The Agency proposes to amend and update § 201.108-1 by incorporating instructions for weighing live poultry on electronic scales with digital readouts. Currently, § 201.108-1 contains instructions for weighing live poultry on weighbeam and dial scales, but does not include electronic scales. We also propose to amend the regulation to assure uniformity of requirements for weighing livestock and poultry.

A review of the following regulations and statements of general policy has been completed and the Agency proposes to retain each in its present form:

§ 201.53 Persons subject to the Act not to circulate misleading reports about market conditions or prices.

§ 201.69 Furnishing information to competitor buyers.

§ 201.70 Restriction or limitation of competition between packers and dealers prohibited.

§ 201.73 Scale operators to be qualified.

§ 201.76 Reweighing.

§ 201.100 Records to be furnished poultry growers and sellers.

§ 201.200 Sale of livestock to a packer on credit.

§ 203.2 Statement of general policy with respect to the giving by meat packers of meat and other gifts to Government employees.

§ 203.4 Statement with respect to the disposition of records by packers, live poultry dealers, stockyard owners, market agencies and dealers.

§ 203.7 Statement with respect to meat packer sales and purchase contracts.

§ 203.15 Trust benefits under sections 206 and 207 of the Act.

§ 203.16 Mailing of checks in payment for livestock purchased for slaughter, for cash and not on credit.

§ 203.18 Statement with respect to packers engaging in the business of custom feeding livestock.

§ 203.19 Statement with respect to packers engaging in the business of livestock dealers or buying agencies.

In the process of reviewing these regulations, it was determined that they were necessary to the efficient and effective enforcement of the P&S Act and to the orderly conduct of the marketing system. The absence of any of the regulations would be detrimental to the industry and could result in increased litigation.

Comments received pursuant to the Advance Notice of Proposed Rulemaking concerning §§ 203.2, 203.15 and 203.16 were generally in support of retaining each in its present form. No comments were received concerning §§ 201.69, 201.200 and 203.7.

Five comments were received concerning modification of § 201.53. This regulation prohibits packers, live poultry dealers, stockyard owners, market agencies, or dealers from knowingly making, issuing, or circulating false or misleading reports concerning market conditions or prices on the sale of livestock, meat, or live poultry. One comment came from a legal service group representing a poultry grower association and four from poultry grower associations recommending that the regulation be broadened to prohibit the distribution of false or misleading information about the income contract growers receive or could expect to receive in a contract growing arrangement. The Agency is not proposing any changes in the requirements of § 201.53 and believes the regulation, as written, adequately specifies that the Agency considers it an unfair practice under section 202 of the P&S Act to disseminate false or misleading market information.

Two comments were received concerning modification of § 201.70.

This regulation requires that packers and dealers operate their livestock buying operations in competition with, and independently of, one another to avoid a restriction of competition. The comments came from a trade association and a livestock auction market and recommended that the regulation be limited to cover only those situations that result in anticompetitive behavior. The Agency is not proposing any changes in the current requirements of § 201.70, as the regulation, coupled with the provisions of the P&S Act, is adequate to ensure that the intent of the Act is not compromised.

Five comments were received concerning modification of § 201.73. This regulation requires that stockyard owners, market agencies, dealers, packers, and live poultry dealers employ only qualified persons to operate their scales and requires that such employees operate the scales in accordance with the regulations. One comment came from a legal service group representing a poultry grower association and four from poultry grower associations recommending that the regulation be broadened to require live poultry dealers to employ qualified weighmasters to weigh poultry feed delivered to contract poultry growers. The same five commentators recommended that § 201.76, which requires stockyard owners, market agencies, dealers, packers and live poultry dealers to reweigh livestock, livestock carcasses, or live poultry on request of any authorized representative of the Secretary, be broadened to include poultry feed in the reweighing requirements. The Agency is proposing no changes to § 201.73 or § 201.76. The Agency is considering addressing the issue of poultry feed weighing where feed weight is a part of the grower's compensation formula under a separate rulemaking.

Seven comments were received concerning modification of § 201.100. This regulation requires that poultry growing agreements be written and that they contain essential specified elements. It also provides that growers are entitled to receive documents necessary for independent verification of their settlement. Two comments were received from legal service groups representing poultry producers, four from poultry growers associations, and one from a producer association. Five of the seven comments recommended adding language to subsection (d) to prohibit employees of live poultry dealers who also raise poultry under growing arrangements with the dealer by whom they are employed from being included in a grouping or ranking of

poultry growers. One comment recommended expanding subsection (a) to include livestock. The seventh comment recommended that this regulation be diligently enforced to ensure that growers have sufficient information to understand their settlement checks. Past investigations of growout arrangements have not shown that employees of a live poultry dealer, who also happen to raise poultry, have an inherent advantage over other contract growers that would warrant prohibiting employee and nonemployee contract growers from being grouped together. Further, the Agency is aware that more and more livestock is being produced under various contractual arrangements, however, other provisions of the statute and regulations have been sufficient to address concerns thus far. Therefore, the Agency is not proposing any changes in § 201.100.

Six comments were received concerning modification of § 203.4. This policy statement notifies persons subject to the P&S Act that certain records may be disposed of after a specific period of time. It also states that the Deputy Administrator may require that records should be retained for a longer period pending completion of an investigation. The policy statement advises that if records are disposed of before the specified periods, the Agency will consider taking formal action. One comment was received from a legal service group representing a poultry grower association, four from poultry grower associations, and another from a producers association. One comment recommended no change and the other five recommended modifying the policy statement to require that records be maintained for a 5-year period. This section has not caused problems in administering the provisions of the P&S Act. Further, the Agency has the authority to require that records be retained for longer periods when deemed necessary.

Four comments were received concerning modifications of § 203.18. This policy statement notifies packers that ownership or operation of custom feedlots may, under certain circumstances, result in a conflict of interest or anticompetitive violations. It suggests packers consult with the Agency before commencing such activity. All four comments were from producer associations. Two comments recommend section (c) be modified to require consultation with the Agency prior to acquiring, merging with, or operating a custom feedlot. The two other comments recommend a strict prohibition against packers owning or operating custom feedlots. While the

Agency continues to be concerned about potential conflicts of interest, current arrangements do not appear to have created conflicts warranting a per se prohibition. Also, current authority under the P&S Act is sufficient to allow the Agency to review any arrangement, at any time that it appears that it may result in an unfair practice or advantage. For these reasons, no changes are being proposed in § 203.18 at this time. The Agency will continue to evaluate these types of arrangements on a case-by-case basis.

Four comments suggested modifications to § 203.19. This policy statement notifies packers that operating as a livestock dealer or buying agency may, under certain circumstances, result in violations of the P&S Act. All four comments were from producer associations. Two comments recommend subsection (c)(1) be modified to require consultation with the Agency prior to operating as a market agency or dealer. Another comment suggested the policy statement be broadened to place the burden of proof on the packer to prove such ownership does not restrain trade. The fourth comment recommends packers be prohibited from operating as dealers or buying agencies. The Agency has not proposed changes in § 203.19 at this time, but will continue to evaluate each such arrangement on a case-by-case basis. As a practical matter, most packers consult with the Agency before entering into such arrangements. Amending this rule to require such consultation does not appear necessary. Attempting to shift the burden of proof that the arrangement does not restrain trade would not relieve the Agency of the responsibility to investigate and make a factual determination.

The proposed changes in §§ 201.49, 201.55, 201.71, 201.73-1, 201.98, and 201.108-1 do not impose or change any recordkeeping or information collection requirements. Existing requirements in these regulations have been previously approved by OMB under Control No. 0590-0001.

As provided by the Regulatory Flexibility Act, it is hereby certified that these proposed amended rules will not have a significant economic impact on a substantial number of small entities and a statement explaining the reasons for the certification is set forth in the following paragraph and is being provided to the Chief Counsel for Advocacy of the Small Business Administration.

While these proposed amended rules impact small entities, they will not have a significant economic impact on any entity, large or small. The primary effect

of the changes in rules §§ 201.49 and 201.71 is to require that when livestock is purchased on the basis of carcass weight the scale used on such purchases be equipped with a printer. The primary effect of the rule change in § 201.55 is to require that when poultry is bought, sold, acquired, or settled on a weight basis, then the actual weight on the scale ticket be used for such purposes, as is currently required for livestock. The primary effect of the rule change in § 201.73-1 is to make a technical change in the name of the Agency pursuant to Pub. L. 103-354, the Federal Crop Insurance Reform and the Department of Agriculture's Reorganization Act of 1994. The primary effect of the rule change in § 201.98 is to allow packers and dealers to charge for services that are mandated by law or statute. The primary effect of the rule change in § 201.108-1 is to update the regulation.

This rule has been determined to be not significant for purposes of executive order 12866 and therefore has not been reviewed by OMB. These amendments do not impose any new paperwork requirements and do not have implications of Federalism under the criteria of E.O. 12612.

These proposed amendments have been reviewed under E.O. 12778, Civil Justice Reform, and are not intended to have retroactive effect. These amendments will not preempt state or local laws, regulations, or policies unless they present an irreconcilable conflict with this amendment. Prior to judicial challenge of the amendment to rule, a party must first be found by the Secretary to be in violation of the P&S Act and in violation of the accompanying regulations. Second, the party must appeal that finding and the validity of the regulation to the Secretary in the course of the administrative proceeding. Only after taking these steps, the party may challenge the regulation in a court of competent jurisdiction.

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Stockyards, Trade practices.

Done at Washington, D.C. this 26th day of May 1995.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

For the reasons set forth in the preamble, the Grain Inspection, Packers and Stockyards Administration proposes to amend 9 CFR part 201 as follows:

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

Authority: 7 U.S.C. 204, 228; 7 CFR 2.17(e), 2.56.

2. Revise § 201.49 to read as follows:

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

(a) Livestock. When livestock is weighed for the purpose of purchase or sale, a scale ticket shall be issued which shall be serially numbered and used in numerical sequence. Sufficient copies shall be executed to provide a copy to all parties to the transaction. In instances where the weight values are automatically recorded directly on the account of purchase, account of sale or other basic record, this record may serve in lieu of a scale ticket. When livestock is purchased on a carcass weight or carcass grade and weight basis, the hot carcass weights shall be recorded using a scale equipped with a printing device, and such printed weights shall be retained as part of the person or firm's business records to substantiate settlement on each transaction. Scale tickets issued under this section shall 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 number of the person who weighed the livestock, or if required by State law, the signature of the weigher.

(b) Poultry. When live poultry is weighed for the purpose of purchase, sale, acquisition, or settlement by a live poultry dealer, a scale ticket shall be issued which shall 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, purchaser, or seller;
- (4) The name or initials or number of the person who weighed the poultry, or if required by State law, the signature of the weigher;
- (5) The location of the scale;
- (6) The gross weight, tare weight, and net weight;
- (7) The date and time gross weight and tare weight are determined;
- (8) The number of poultry weighed;
- (9) The weather conditions;
- (10) Whether the driver was on or off the truck at the time of weighing; and
- (11) The license number of the truck or the truck number; provided, that

when live poultry is weighed on a scale other than a vehicle scale, the scale ticket need not show the information specified in paragraphs (b)(9)–(11) of this section. 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 furnished to the grower, purchaser, or seller, and one copy shall be furnished to or retained by the live poultry dealer.

(Approved by the Office of Management and Budget under control number 0590–0001)

3. Revise § 201.55 to read as follows:

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

When livestock or live poultry is bought, sold, acquired, or settled on a weight basis, settlement therefor shall be on the basis of the actual weight 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 weights shall be fully and accurately explained on the accountings, bills, or statements issued and records shall be maintained to support such adjustment.

(Approved by the Office of Management and Budget under control number 0590–0001)

4. Revise § 201.71 (a) and (b) 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, or live poultry for the purpose of purchase, sale, acquisition, or settlement shall be installed, maintained, and operated to insure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code, and Weights Code of the 1995 edition of National Institute of Standards and Technology 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 date of approval]. 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, D.C. 20402. It is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. 20408.

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

* * * * *

5. Revise § 201.73–1 introductory text to read as follows:

§ 201.73–1 Instructions for weighing livestock.

Stockyard operators, market agencies, dealers, and packers who operate scales on which livestock is weighed in purchase or sales transactions are responsible for the accurate weighing of such livestock. They shall supply copies of the instructions in this section to all persons who perform weighing operations for them and direct such person 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, P&SA Form 215 provided by the Packers and Stockyards Programs. One copy of the form is to be filed with a regional office of the Packers and Stockyards Programs and the other retained by the agency employing the weighers.

* * * * *

6. Revise § 201.98 to read as follows:

§ 201.98 Packers and dealers not to charge, demand, or collect commission, yardage, or other services charges.

No packer or dealer shall, in connection with the purchase of livestock in commerce, charge, demand, or collect 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.

7. Revise § 201.108–1 introductory paragraph and paragraphs, (a) and (c)–(f) to read as follows:

§ 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, on 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 intention and shall assure himself that no persons or vehicles are in contact with the platform. When the empty scale is balanced and ready for weighing, he 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 the ticket printer must record a correct zero balance. "Balance tickets" shall be filed with other scale tickets issued on that date.

(5) Electronic digital scales should be properly warmed up before use. In most cases it is advisable to leave the electric power on continuously. The zero balance shall be verified by recording the zero balance on a scale ticket. The main indicating element and the remote visual weight display shall indicate zero when the balance is verified. The proper procedure for balancing this type of scale will vary according to the manufacture. Refer to the operator's manual for specific instructions.

(6) A balance ball or other balancing device shall be operated only when balancing the empty scale and shall not be operated at any other time or for any other purpose.

(7) The time at which the empty scale is balanced or its zero balance verified shall be marked on scale tickets or other permanent records.

* * * * *

(c) Weighing the load. (1) Vehicle scales used to weigh live poultry shall be of sufficient length and capacity to weigh an entire vehicle as a unit; provided, that a trailer may be uncoupled from a tractor and weighed as a single unit. Before weighing a vehicle, either coupled or uncoupled, the weigher shall assure himself that the entire vehicle is on the scale platform and that no persons are on the scale platform.

(i) On a weighbeam scale with a balance indicator the weight of a vehicle shall be determined by moving the poises to such positions that the indicator will come to rest within the central target area.

(ii) On a weighbeam scale without a balance indicator the weight shall be determined by moving the poises to such positions that the weighbeam, when released from the top or bottom of the trig loop, will swing freely in the trig loop and come to rest at the approximate center of the trig loop.

(iii) On a dial scale the weight of a vehicle is indicated automatically when the indicator revolves around the dial face and comes to rest.

(iv) On an electronic digital scale the weight of a vehicle is indicated automatically when the weight value indicated is stable.

(2) The correct weight is the value in pounds indicated by a weighbeam, dial or digital scale when a stable load

balance is obtained. In any case, the weigher should concentrate his attention upon the beam tip, balance indicator, dial or digital indicator while weighing and not concern himself with reading the visible weight indications until a stable load balance is obtained. On electronic digital scales, the weigher should concentrate on the pulsing or flickering of weight values to assure that the unit indicates a stable weight before activating the print button.

(d) Recording the weight. (1) The gross or tare weight shall be recorded immediately after the load balance is obtained and before any poises are moved or load removed from the scale platform. The weigher shall make certain that the printed weight record agrees with the weight value visibly indicated on the weighbeam, dial or digital indicator when correct load balance is obtained. The weigher shall also assure that the printed weight value is sufficiently distinct and legible.

(2) The weight printing device on a scale shall be operated only to produce a printed or impressed record of the weight while the load is on the scale and correctly balanced. If the weight is not printed clearly and correctly, the ticket shall be marked void and a new one printed before the load is removed from the scale.

(e) Weigher's responsibilities. (1) The primary responsibility of a weigher is to determine and record the true weight of live poultry without prejudice or favor to any person or agency and without regard for poultry ownership, price, condition, shrink, or other considerations. A weigher shall not permit the representations or attitudes of any persons or agencies to influence his judgment or action in performing his duties.

(2) Scale tickets issued shall be serially numbered and used in numerical sequence. Sufficient copies shall be executed to provide a copy to all parties to the transaction. Unused scale tickets or those which are partially executed shall not be left exposed or accessible to other parties. All such tickets shall be kept under lock when the weigher is not at his duty station.

(3) Accurate weighing and weight recording require that a weigher shall not permit his operations to be hurried to the extent that inaccurate weights or incorrect weight records may result. The gross, tare and net weights must be determined accurately to the nearest minimum graduation. Manual operations connected with balancing, weighing, and recording shall be performed with the care necessary to prevent damage to the accurately machined and adjusted parts of

weighbeams, poises, and printing devices. Rough handling of these parts shall be avoided.

(4) 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. He shall check the zero balance of the scale or reweigh a load of poultry when requested by such parties or duly authorized representatives of the Administrator.

(f) General precautions. (1) The poises of weighbeam scales are carefully adjusted and sealed to a definite weight at the factory and any change in that weight seriously affects weighing accuracy. A weigher, therefore, shall observe if poise parts are broken, loose or lost or if material is added to a poise and shall report any such condition to his superior or employer. Balancing or weighing shall not be performed while a scale ticket is in the slot of a weighbeam poise.

(2) Stops are provided on scale weighbeams to prevent movement of poises back of the zero graduation when balancing or weighing. When the stops become worn or broken and allow a poise to be set behind the zero position, this condition must be reported by the weigher to his superior or employer and corrected without delay.

(3) Motion detection circuits are a part of electronic scales. They are designed to prevent the printing of weight values if the load has not stabilized within prescribed limits. The weighmaster's duty is to print the actual weight of the load within these limits. This requires printing the actual weight of the load, not one of the other weights that may be within the motion detection limits.

(4) Foreign objects or loose material in the form of nuts, bolts, washers, or other material on any part of the weighbeam assembly, including the counter-balance hanger or counter-balance weights, are potential sources of weighing error. Loose balancing material must be enclosed in the shot cup of the counter-balance hanger and counter-balance weights must not be of the slotted type which can readily be removed.

(5) Whenever, for any reason, a weigher has reason to believe that a scale is not functioning properly or not yielding correct weight values, he shall discontinue weighing, report the facts to the parties responsible for scale maintenance and request inspection, test or repair of the scale.

(6) When a scale has been adjusted, modified, or repaired in any manner

which can affect the accuracy of weighing or weight recording, the weigher shall not use the scale until it has been tested and inspected and found to be accurate.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-CE-29-AD]

Airworthiness Directives; Piper Aircraft Corporation Model PA-46-350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piper Aircraft Corporation (Piper) Model PA-46-350P airplanes. The proposed action would require installing to the right of the manifold pressure gauge in full view of the pilot a placard that specifies manifold pressure limits, and incorporating a revision into the Limitations section of the Pilots' Operating Handbook (POH). After recent review of the Piper Model PA-46-350P powerplant data, the Federal Aviation Administration (FAA) determined that certain manifold pressure limitations should be incorporated. These limitations fall outside the normal continuous operation range of the engine, and therefore testing was not performed in this area during original type certification. The actions specified by the proposed AD are intended to prevent fatigue damage to the propeller caused by operating above certain manifold pressure limits.

DATES: Comments must be received on or before August 11, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-29-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be

examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7362; facsimile (404) 305-7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95-CE-29-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-29-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Following the Piper Model PA-46-350P airplane power plant review, the FAA realized that the vibration approval for the Hartzell propeller Model HC-12YR-1 (BF) and Lycoming engine model TIO-540-AE2A contains a manifold pressure restriction, as follows: