

per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1999 crop is estimated at 16,810,410 bales. The 1999 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 32 cents per bale reduction and was subtracted from the 1999 base fee of \$2.14 per bale, resulting in a fee of \$1.82 per bale.

With a fee of \$1.82 per bale, the projected operating reserve would be 46.66 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of \$1.82 must be reduced by 47 cents per bale, to \$1.35 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 1999 season fee at \$1.35 per bale.

Accordingly, § 28.909, paragraph (b) would be revised to reflect the increase in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents requesting classification data provided on computer punched cards will continue to be charged the fee of 10 cents per card in § 28.910(a) to reflect the costs of providing this service. Requests for punch card classification data represented only 0.7 percent of the total bales classed from the 1998 crop, down from 2.6 percent in 1997. Growers or their designated agents receiving classification data by methods other than computer punched cards would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at five cents per bale, and it would be applicable even if the same

method was requested. However, if computer punched cards were requested, a fee of ten cents per card would be charged. The fee in § 28.910(b) for an owner receiving classification data from the central database would remain at five cents per bale, and the minimum charge of \$5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be increased from \$1.30 per bale to \$1.35 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

A thirty-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed changes, if adopted, would be made effective July 1, 1999, as provided by the Cotton Statistics and Estimates Act.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is proposed to be amended as follows:

PART 28—[Amended]

1. The authority citation for 7 CFR part 28, subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is \$1.35 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is \$1.35 per bale.

* * * * *

Dated: March 30, 1999.

Enrique E. Figueroa,
Administrator, Agricultural Marketing Service.

[FR Doc. 99–8160 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AA64

Regulations Issued Under the Packers and Stockyards Act

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

ACTION: Proposed Rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to amend existing scales and weighing regulations under the Packers and Stockyards (P&S) Act to include requirements regarding the weighing of feed whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The current regulations do not contain any requirements regarding the weighing of feed although, in some circumstances, feed weight affects payment or settlement to livestock growers and poultry growers. The proposed amendment to the current regulations will provide livestock growers and poultry growers with a measure of assurance that feed is accurately weighed or reasonably determined and feed weight is properly documented whenever feed weight affects payment or settlement to livestock growers or poultry growers.

DATES: Comments must be received on or before June 1, 1999.

ADDRESSES: Comments may be mailed to the U.S. Department of Agriculture, Deputy Administrator, Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Programs, Stop 3641, 1400 Independence Avenue, SW, Washington, DC 20250–3641; Fax: 202–205–3941; E-mail:

PSP.GIPSA@usda.gov. Comments received may be inspected during normal business hours in the Office of the Deputy Administrator, Packers and Stockyards Programs.

FOR FURTHER INFORMATION CONTACT: Michael Caughlin, Director, Office of Policy/Litigation Support, (202) 720–6951.

SUPPLEMENTARY INFORMATION: GIPSA is proposing to amend existing scales and weighing regulations under the P&S Act to include requirements regarding the weighing of feed when the weight of feed is a factor in determining payment or settlement to livestock growers and

poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement.

In February 1997, GIPSA issued an Advance Notice of Proposed Rulemaking (ANPRM) (62 FR 5935-37) soliciting comments from poultry growers, integrators, and other interested parties on the need for and the possible wording of regulations regarding comparison contracts, feed weighing procedures, and live poultry weighing.¹ GIPSA received 3,415 comments, of which 1,129 expressed concerns regarding feed weighing procedures including concerns that feed is not properly weighed; the weight should be printed electronically and not handwritten; the truck delivering the feed should be sealed to secure each individual lot of feed; and excess feed that is returned should be reasonably determined and properly documented to credit the grower for the unused feed.

Many of those comments also suggested that feed scales should be better regulated by requiring semiannual testing by competent testing agencies or companies as is currently required for scales used to weigh live poultry. In addition, GIPSA received comments prior to initiating this rulemaking process from livestock growers and continues to receive complaints that indicate that these same concerns exist in the livestock industry. Furthermore, GIPSA continues to receive complaints from individual livestock growers and poultry growers concerning feed weights both with respect to feed deliveries and excess feed picked up or returned at the end of the growing cycle.

This proposed rulemaking would address the concerns of livestock growers and poultry growers by requiring those firms supplying feed to growers, either directly or indirectly, to weigh feed accurately, reasonably determine the weight of excess feed and properly account for feed weight when the weight of the feed is a factor in determining payment or settlement to livestock growers or poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement. "Growing arrangements" with respect to poultry means "growing arrangements" as defined in section 2(a)(9) of the Act (7 U.S.C. 183(a)(9)). The term "livestock growing arrangement" means any growing or feeding arrangement under which a livestock grower raises and cares for livestock for delivery, in accord with a market agency, dealer, or packer's

instructions. Feed weight is reasonably determined when the manner of determining the feed weight is mutually acceptable to both the feed provider and the livestock grower or poultry grower.

Extending existing regulations governing weighing practices and technical requirements for scales to include weighing feed will result in uniform requirements for weighing that affect payment and settlement to livestock growers and poultry growers. Since feed weights are an integral part of the payment or settlement calculation in many livestock and poultry growing arrangements, basic scale requirements and weighing procedures are critical to assure payment or settlement based on accurate weights. Most States do not consider feed scales as commercial devices unless the feed is sold directly to the general public. Therefore, feed scales that would fall under the purview of this proposed rule, which are not generally used to sell feed directly to the general public, are usually not required to be tested by State weights and measures officials. Thus, State regulatory oversight of the weighing of feed delivered to livestock growers or poultry growers is not adequate to address the concerns of these industries.

This proposed rule would modify §§ 201.49, 201.71, 201.72, and 201.73 of the regulations to include requirements regarding the weighing of feed whenever feed weight is used as a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The proposed modifications in these sections will make the requirements for feed weighing consistent with the requirements for the weighing of livestock and live poultry.

Specifically, § 201.49 would be amended to include a paragraph (c) which would require a scale ticket be issued with specified information pertaining to the weight and identification of the lot of feed consistent with the other scale ticket requirements included in this section. Section 201.71 would be amended to require that scales weighing feed: (1) Be installed, maintained, operated and tested in accordance with the National Institute of Standards and Technology (NIST) Handbook 44, 1996 edition, entitled "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices"; (2) be equipped with a printing device used for recording weight; (3) be of sufficient length and capacity to weigh an entire load when feed is weighed on a vehicle scale; and (4) be found, upon test and

inspection, to be in a condition to provide accurate weight. Section 201.72 would be amended to include scales used to weigh feed in the requirement that scales be tested twice during each calendar year at intervals of approximately 6 months by competent persons and that copies of test reports be furnished to the P&S Programs regional office. Section 201.73 would be amended to require that scales used to weigh feed be operated by qualified persons in accordance with the regulations.

Section 201.55 would be amended to require that the actual weight of feed be shown on scale tickets or otherwise be explained and that the weight of picked up or returned excess feed be reasonably determined, documented and credited back to the livestock grower or poultry grower. Feed weight is reasonably determined when the manner of determining the feed weight is mutually acceptable to both the feed provider and the livestock grower or poultry grower.

The proposed rulemaking should not impose any significant additional regulatory burden on the affected industries since the feed scales of many subject firms are routinely tested, whether by State weights and measures organizations or by private scale companies as a normal business practice. Recordkeeping under the proposed regulations would impose little burden upon subject firms since a majority of the affected entities utilize adequate weighing and documentation procedures. Under current regulations, firms subject to the P&S Act are not required to file copies of their feed scale test reports with P&S, although the proposed regulations will require firms subject to the P&S Act to file copies of the scale test reports with the appropriate P&S regional office.

Executive Order 12866

This rule has been determined to be significant for the purpose of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Executive Order 12988

This rule has been reviewed under E.O. 12988, Civil Justice Reform, and is not intended to have retroactive effect. This amendment will not pre-empt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

Effects on Small Entities

GIPSA proposes to amend §§ 201.49, 201.55, 201.71, 201.72, and 201.73 to include feed weighing when the weight of feed is a factor in determining payment or settlement to livestock

¹ Comments on the other two issues addressed by the ANPRM (comparison contracts and live poultry weighing) are still being analyzed by GIPSA.

growers or poultry growers. The additional information collection is required to provide such growers assurance that feed scales are being tested and maintained properly, that feed is accurately weighed or reasonably determined, and that recipients of feed are receiving proper and adequate documentation of the feed weight.

The economic impact of the proposed regulations will be minimal.

Approximately 260 poultry integrators currently supply feed to poultry growers and an estimated 50 additional entities operating subject to the P&S Act currently supply feed to livestock growers where the weight of feed is an integral factor in determining payment or settlement to livestock growers or poultry growers. Most subject firms deliver feed directly from their own feed mills, but a few order feed from independent feed mills for delivery to livestock growers or poultry growers. In each case, subject firms would be responsible for ensuring that scales used to determine the weights of feed have a printing device and conform to the specifications of the NIST Handbook 44 (H-44), 1996 edition. Currently, most feed scales have a weight printing device and conform with H-44 requirements. Scale installation companies usually do not install a scale system that is not approved or appropriate for weighing feed under the proposed amended regulations. Therefore, we do not anticipate any significant economic impact.

Under the proposed regulation, subject firms would be required to test their scales twice a year and submit a copy of the test reports to the appropriate P&S regional office. Most entities currently have their scales tested at least twice a year either by State weights and measures officials or by private scale companies which would satisfy the semiannual testing requirement. Those entities not conducting two scale tests a year would be required to employ a scale company to test the scale a second time during the year or request a second test from the State. Feed manufacturers, as is customary in most industries dealing in bulk commodities, have their scales tested frequently to ensure accurate weights, prevent system malfunction, and avoid down time.

There would be a minimal recordkeeping burden on the industry to submit a copy of the scale test report, on a semiannual basis, to the P&S regional office. This burden would entail obtaining a copy of the scale test report, which is completed by either the State or private scale company as a matter of routine documentation, and mailing it

to the P&S regional office. Many States and scale companies mail the copies of the scale test reports to the P&S regional office for the customer.

Compliance with the requirements for scale tickets is projected to cause minimal burden on the industry. Those companies that do not print a scale ticket for feed or that print scale tickets that do not include all the information proposed in the amendment would have to change their procedures to include the required information. However, the additional time to add the required information, such as truck or trailer numbers, grower's name, and whether the truck driver was on or off at the time of weighing, is insignificant.

In addition, subject firms would be required to retain weight records in accordance with the provisions of the proposed regulatory amendment. In general, this does not entail any retention burden beyond that of normal and customary business practices.

GIPSA has 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.*). The proposed rule will affect entities in contractual relationships with livestock growers or poultry growers when those entities supply feed, either directly or indirectly, to livestock growers or poultry growers and the weight of the feed is a factor in payment or settlement to growers. Presently, most of the entities that will be affected by this proposed rule are poultry slaughterers and processors of chickens with more than 500 employees and thus do not meet the requirements for small entities as defined in Section 3 the Small Business Act (13 CFR part 121(3)). Even though there may be some affected entities that could be considered small entities, the proposed rule, in most cases, would not require any substantial incurrence of expense or change in the routine operations for entities of any size.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements in Part 201 have been previously approved by the Office of Management and Budget under control number 0580-0015. Currently, §§ 201.49 and 201.72 require, in brief, that: (1) Scale tickets with certain required information be retained with the accounting files, and (2) scale test reports be sent to the P&S regional office. The additional requirements proposed herein would require persons subject to the P&S Act, where the weight

of the feed is a factor in determining payment or settlement to livestock growers or poultry growers, to produce scale tickets in accordance with the same requirements that are imposed on those operating livestock, poultry, and monorail scales and to provide copies of scale test reports to the P&S regional office.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for GIPSA, Washington, DC 20503. Please state that your comments refer to Regulations issued under the Packers and Stockyards Act, RIN 0580-AA64. Please send a copy of your comments to (1) Deputy Administrator, Packers and Stockyards Programs, GIPSA, USDA, Stop 3641, 1400 Independence Avenue, SW, Washington, DC 20250-3641; and (2) Clearance Officer, OCIO, USDA, Room 404-W, 1400 Independence Avenue, SW, Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule. All comments will become a matter of public record.

The estimated 300 firms that will be affected by this proposed amendment are expected to spend an estimated 10 additional hours per year complying with the semiannual scale testing requirements and the routine completion of scale tickets, resulting in a total increase of 3,000 hours per year in the reporting burden of these firms. These estimates were derived from previously approved burden hours for the same regulatory report and recordkeeping requirements for weighing livestock and live poultry.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are required to comply, including through the use of appropriate automated, electronic, mechanical, or other technological collection

techniques or forms of information technology.

Implementing this proposed rule would change burdens in the currently approved collection of information to:

Estimate of burden: Public reporting and recordkeeping burden for this collection of information is estimated to average 8.5 hours per response.

Respondents: Livestock auction markets, livestock dealers, packer buyers, meat packers, and live poultry dealers.

Estimated annual number of responses per respondent: 3.2.

Estimated annual number of responses: 24,815.

Estimated total annual burden on respondents: 304,106.

The hours above (304,106) reflect the total burden hours for the current information collection in conjunction with the proposed amendment to the weighing regulations. The amended weighing regulation is calculated to add only an additional 3,000 burden hours.

Copies of this information collection can be obtained from Clearance Officer, OCIO, USDA, room 404-W, 1400 Independence Avenue, Washington, DC 20250.

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Trade practices

For the reasons set forth in the preamble, 9 CFR part 201 is amended to read as follows:

PART 201—[Amended]

1. The authority citation for Part 201 would be revised to read as follows:

Authority: 7 U.S.C. 204, 228; 7 CFR 2.22, 2.81.

2. Section 201.49 would be amended by revising the heading and adding paragraph (c) to read as follows:

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

* * * * *

(c) *Feed.* (1) Whenever feed is weighed by or on behalf of a stockyard owner, market agency, dealer, packer, or live poultry dealer where the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower, a scale ticket shall be issued which shall show:

(i) The name of the agency performing the weighing service or the name and location of the firm responsible for supplying the feed;

(ii) The name and address of the livestock grower or poultry grower;

(ii) The name or initials or number of the person who weighed the feed, or if

required by State law, the signature of the weigher;

(iv) The location of the scale;

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

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

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

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

(ix) The license number or other identification numbers of the truck and trailer, if weighed together, or trailer if only the trailer is weighed, if applicable.

(2) 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 retained by the person subject to the P&S Act, and a second copy shall be furnished to the livestock grower or poultry grower.

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

3. Section 201.55 would be revised to read as follows:

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

(a) Except as provided in paragraph (b) of this section, whenever livestock or live poultry is bought, sold, acquired, paid, or settled on a weight basis, or whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower by a stockyard owner, market agency, dealer, packer, or live poultry dealer, payment or settlement shall be on the basis of the actual weight of the livestock, live poultry, and/or feed shown 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.

(b) Every stockyard owner, market agency, dealer, packer, and live poultry dealer shall reasonably determine, document, and account for the weight of any feed that is picked up from or returned by a livestock grower or poultry grower whenever the weight of the feed is a factor in determining the

payment or settlement due to such livestock grower or poultry grower.

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

4. Section 201.71 would be revised 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, 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, Scale Code, and Weights Code of the 1996 edition of 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 January 11, 1989. 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, DC 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, DC 20408.

(b) All scales used by stockyard owners, 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.

(c) All vehicle scales used to weigh livestock, live poultry or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry shall be of sufficient length and capacity to weigh the entire vehicle as a unit: Provided, That a trailer may be uncoupled from the tractor and weighed as a single unit.

(d) No scale shall be operated or used by any stockyard owner, market agency, dealer, packer, or live poultry dealer to

weigh livestock, livestock carcasses, live poultry, or feed for 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 found to be in a condition to give incorrect or inaccurate weights or if any repairs, 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.

5. Section 201.72 would be revised to read as follows:

§ 201.72 Scales; testing of.

(a) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, shall cause such scales to be tested by competent persons in accordance with the regulations at least twice during each calendar year at intervals of approximately 6 months. More frequent testing will be required in cases where the scale does not maintain accuracy between tests.

(b) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, livestock carcasses, live poultry or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry shall furnish reports of such tests and inspections on forms prescribed by the Administrator. The stockyard owner, market agency, dealer, packer or live poultry dealer shall retain one copy of the test and inspection report and shall file one copy with the P&S regional office for the region in which the scale is located.

(c) When scales used for weighing livestock, livestock carcasses, live poultry, or feed are tested and inspected by an agency of a State or municipality or other governmental subdivision, the forms ordinarily used by such agency for reporting test and inspection of scales shall be accepted in lieu of the forms prescribed for this purpose by the Deputy Administrator if such forms contain substantially the same information.

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

6. Section 201.73 would be revised to read as follows:

§ 201.73 Scale operators to be qualified.

Stockyard owners, market agencies, dealers, packers, and live poultry dealers shall employ qualified persons to operate scales for weighing livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses, or live poultry and they shall require such employees to operate the scales in accordance with the regulations.

Done at Washington, DC, this March 26, 1999.

Harold W. Davis,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 99-8068 Filed 4-1-99; 8:45 am]

BILLING CODE 3410-EN-P

SMALL BUSINESS ADMINISTRATION

13 CFR part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: SBA proposes to limit the fees that a Certified Development Company (CDC) can charge a Borrower or Third Party Lender in connection with the processing of a 504 financing to the 1.5 percent processing fee currently authorized by SBA regulations. SBA invites comment on this proposed change and the policies underlying the change.

DATES: Submit comments on or before May 3, 1999.

ADDRESSES: Comments should be mailed to Jane Palsgrove Butler, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael J. Dowd, 202-205-6660.

SUPPLEMENTARY INFORMATION: SBA proposes to delete § 120.926 (13 CFR 120.926) and amend § 120.971 (13 CFR 120.971) of its regulations. The proposed amendments would clarify SBA's policy prohibiting a CDC from charging a Borrower more than 1.5 percent of the net debenture proceeds for all services related to processing a 504 financing. SBA invites comment on this policy. In addition, SBA proposes to amend its regulations to prohibit a CDC from charging a Third Party Lender for any services related to the processing

or packaging of a 504 financing. SBA also invites comment on this proposed policy change.

Before March 1, 1996, the fees that SBA permitted a CDC to charge a Borrower for services related to a 504 financing were contained in SBA's regulations, 13 CFR 108.503-6. In addition to a fee from the Borrower of up to 1.5 percent of the net debenture proceeds to cover CDC costs for loan packaging, processing, and non-legal staff functions, the regulations permitted a CDC to charge the Borrower or Third-Party Lender an additional fee of up to 1.5 percent of the third party financing for services actually rendered by the CDC under a written agreement.

On December 15, 1995, in response to directives from the President for Federal agencies to streamline their regulations, SBA published proposed regulations (60 FR 64356) which consolidated parts 108, 116, 120, 122, and 131 of its regulations into a revised part 120. Former § 108.503-6 (except paragraph (c)) became § 120.971 in the proposed regulations under the heading "Post-closing fees paid by Borrower." Proposed § 120.971 listed the fees that a CDC could charge a Borrower in connection with a 504 financing. Paragraph 108.503-6(c) became paragraph 120.961(b) in the proposed regulations. Proposed paragraph 120.961(b) allowed CDCs to charge a "finder's fee" which either the Borrower or Third Party Lender could pay.

On January 31, 1996, SBA published final regulations in the **Federal Register** with an effective date of March 1, 1996 (61 FR 3226) (the "new regulations"). The heading of § 120.971 was changed to "Allowable fees paid by Borrower," but in all other respects remained as proposed. Proposed paragraph 120.961(b) became § 120.926 in the new regulations. It allowed CDCs to charge only the Third Party Lender, and allowed a CDC to receive that fee from the Third Party Lender if the CDC secured the lender for the Borrower under a written contract. Section 120.926 of the new regulations, specifically prohibited a CDC from obtaining that fee directly from the Borrower.

SBA now proposes to prohibit a CDC from charging a Borrower or a Third Party Lender a referral fee or any other fee related to processing or packaging a 504 financing other than the 1.5 percent processing fee a CDC may charge a Borrower pursuant to § 120.971, whatever the CDC may call the fee. Specifically named as prohibited are application fees, finder's fees, referral fees, packaging fees, and additional fees of any kind ("Additional Fees"),