

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 9 CFR Part 201

RIN 0580-AB10

#### Required Scale Tests

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

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to amend one section of the regulations under the Packers and Stockyards Act of 1921, as amended (P&S Act), regarding the requirement that stockyard owners, market agencies, dealers, packers, or live poultry dealers that weigh livestock, live poultry, or feed, have their scales tested at least twice each calendar year at intervals of approximately 6 months. This proposal would amend the current regulations to state that the 6-month interval in which scale owners must have their scales tested each calendar year is no longer approximate. Specifically, the proposal would require that scale owners complete the first of the two scale tests between January 1 and June 30 of the calendar year. The remaining scale test would be required to be completed between July 1 and December 31 of the calendar year. In addition, a minimum period of 120 days would be required between these two tests. More frequent testing would still be required in cases where a scale does not maintain accuracy between tests. Finally, we are proposing to amend that section of the regulations to add "swine contractors" to the list of regulated entities to which the section applies. GIPSA believes that this proposed action would facilitate GIPSA's ability to regulate the business operations of stockyard owners, swine contractors, market agencies, dealers, packers, or live poultry dealers through

the effective enforcement of the P&S Act.

**DATES:** Written or electronic comments received by October 23, 2009 will be considered prior to issuance of a final rule.

**ADDRESSES:** You may submit your written or electronic comments on this proposed rule to:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., room 1643-S, Washington, DC 20260-3642.

- E-mail comments to [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov).

- *Fax:* (202) 690-2173.

Comments should be identified as "P&SP, Required Scale Tests," and should make reference to the date and page number of this issue of the **Federal Register**. All comments will become a matter of public record and available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Staff at (202) 720-7486 for an appointment to view the comments.

**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](mailto:s.brett.offutt@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the P&S Act (7 U.S.C. *et seq.*). Under authority delegated to GIPSA by the Secretary of Agriculture in section 407(a) of the P&S Act (7 U.S.C. 228), we are authorized to issue regulations necessary to carry out the provisions of the P&S Act.

Section 201.72 of the current regulations under the P&S Act (9 CFR 201.72) requires that 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, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, have such scales tested at least twice

during each calendar year at intervals of approximately 6 months. Scale owners must then report the results of the scale tests to the GIPSA Packers and Stockyards Program (P&SP) regional office for the geographical region where the scale is located. Section 201.71 (9 CFR 201.71) requires that scales must meet all applicable requirements of the National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," most recently adopted and incorporated by reference into the P&S Act regulations (currently, the 1996 edition).

Under current procedures, the P&SP regional office, which has enforcement responsibility for the geographic location where a specific scale is located, notifies the scale owner that its scale is due for testing in the event that the scale owner has not filed a scale test report within the required 6-month timeframe. Thereafter, GIPSA sends the scale owner a follow-up letter, or Notice of Default, if GIPSA does not receive the scale test report within 30 days from the date that the scale test report was due. Finally, if the scale owner fails to provide GIPSA with the required test report, GIPSA issues to the scale owner a Notice of Violation, used to inform the scale owner that its scale test reports were not received within the required timeframe under P&S Act regulations. GIPSA also notifies the scale owner that the scale may not be used further until the violation is corrected.

Because the regulations now state that scale tests must be performed at "approximately" 6-month intervals, GIPSA has found that it is difficult to determine when a scale owner may be in violation of the P&S Act for failing to submit a timely scale test report. As a result, GIPSA is proposing that section 201.72(a) (9 CFR 201.72(a)) of the P&S Act regulations be amended to delete the term "approximately" in order to clearly state that scale owners must submit a scale test report to GIPSA every 6 months in a calendar year between the periods January 1 and June 30, and July 1 and December 31, respectively. GIPSA would continue to require more frequent testing of specific scales in cases where the scales do not maintain accuracy between tests.

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107-

171) (Act) amended the P&S Act to add “swine contractor” as a regulated entity. Section 10502 of the Act defined swine contractor as “\* \* \* any person engaged in the business of obtaining swine under a swine production contract for the purpose of slaughtering the swine or selling the swine for slaughter, if (a) the swine is obtained by the person in commerce; or (b) the swine (including products from the swine) obtained by the person is sold or shipped in commerce.”

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

### Options Considered

We considered the option of leaving the term “approximately” in the regulations and instead issuing guidance on what GIPSA considers as being a timely report by a scale owner. GIPSA determined, however, that the regulations should be amended to clearly state the requirement for testing scales in order to give adequate notice to scale owners of when they would be in violation of the regulation. We believe that this proposed amendment to the regulations would enhance our effectiveness in regulating the business operations of stockyard owners, market agencies, dealers, packers, or live poultry dealers through the enforcement of the P&S Act.

We considered the option of not adding swine contractors to the regulations; we would continue to protect the interest of swine producers indirectly through regulation of packers, dealers, and market agencies. That option, however, is contrary to the intent of Congress, which amended the P&S Act to give GIPSA specific authority over swine contractors. The proposed changes to add swine contractor as a regulated entity would make this section consistent with other regulations under the P&S Act regarding regulated entities that have been amended to include swine contractors.

In addition, we are proposing to amend the wording of section 201.72 (9 CFR 201.72) to comply with the President’s Memorandum of June 1, 1998, Plain Language in Government Writing (63 FR 31885). We are also proposing to amend 201.71(b) to substitute “P&SP” for “P&S” to reflect the current name of this USDA–GIPSA program.

### Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA); 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.<sup>1</sup> The affected entities and size threshold under the proposed rule would define as a small business: NAICS code 12111, cattle producers; NAICS code 112210, hog producers and swine contractors; and NAICS codes 112320 and 112330, broiler and turkey producers if their sales are less than \$750,000 per year, respectively. Live poultry dealers, NACIS code 31165; and hog and cattle slaughterers, NACIS code 311611, respectively, are considered as small businesses if they have fewer than 500 employees. Stockyards are found under NACIS code 424520, “Livestock Merchant Wholesalers,” and are considered to be small businesses if they have fewer than 100 employees.

According to the 2008 Annual Report, Packers and Stockyards Program,<sup>2</sup> published on March 1, 2009, there were 339 bonded livestock slaughter firms, 126 live poultry dealers, 4,685 bonded dealers, 1,326 bonded market agencies, and 1,392 posted stockyards operating subject to the P&S Act. While many of these entities would be considered as small businesses by the SBA, we believe that our proposal would not affect those entities significantly since all of the entities, as scale owners, are already required to report scale test results to GIPSA twice in a calendar year at 6-month intervals. Again, we are proposing this amendment to the regulations to clarify the time interval that scale owners must have their scales tested in order to enhance GIPSA’s ability to enhance its enforcement of the P&S Act. GIPSA believes that the benefits of this proposed rule outweigh the costs because every scale owner needs to understand the requirements for having their scales tested in order to avoid violating the P&S Act. While this

<sup>1</sup> See: [http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/serv\\_sstd\\_tablepdf.pdf](http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf).

<sup>2</sup> See: [http://archive.gipsa.usda.gov/pubs/2008\\_psp\\_annual\\_report.pdf](http://archive.gipsa.usda.gov/pubs/2008_psp_annual_report.pdf).

proposed rule would also affect swine contractors, most such entities do not meet the definition for small entities under the SBA. Therefore, we are not providing an initial regulatory flexibility analysis.

We have considered the effects of this rulemaking action under the RFA and we believe that it will not have a significant impact on a substantial number of small entities. We welcome comments on the cost of compliance with this rule, and particularly on the impact of this proposed rule on small entities. We also welcome comments on alternatives to the proposed rule that would achieve the same purpose with less cost to, or burden upon scale owners.

### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. This rule would not pre-empt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

### Paperwork Reduction Act

In accordance with the Office of Management and Budget regulations (5 CFR Part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are covered by this proposed rule were approved under OMB number 0580–0015 on January 30, 2009, and expire on January 31, 2011.

### 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

Reporting and recordkeeping requirements, Measurement standards, Trade practices.

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

### PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

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

**Authority:** 7 U.S.C. 181–229c.

2. Section 201.72 is revised to read as follows:

**§ 201.72 Scales; testing of.**

(a) As a stockyard owner, swine contractor, 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, you must have your scales tested by competent persons at least twice during each calendar year. As a scale owner, you must complete the first of the two scale tests between January 1 and June 30 of the calendar year. The remaining scale test must be completed between July 1 and December 31 of the calendar year. You must have a minimum period of 120 days between these two tests. More frequent testing will be required in cases where the scale does not maintain accuracy between tests.

(b) As a stockyard owner, swine contractor, 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, you must furnish reports of tests and inspections on forms approved by the Administrator. You must retain one copy of the test and inspection report for yourself, and file a second copy with the P&SP regional office for the geographical region where the scale is located.

(c) When scales used for weighing livestock, livestock carcasses, live poultry, or feed are tested and inspected by a State agency, municipality, or other governmental subdivision, the forms used by such agency for reporting such scale tests and inspections may be accepted in lieu of the forms approved for this same purpose by the Administrator if the forms contain substantially the same information.

**J. Dudley Butler,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. E9-20337 Filed 8-21-09; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2008-0821; Directorate Identifier 2008-NE-20-AD]

RIN 2120-AA64

**Airworthiness Directives; General Electric Company (GE) CF34-8E Series Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) for GE CF34-8E series turbofan engines with certain part number (P/N) full authority digital electronic controls (FADECs) installed. That AD currently requires removing certain P/N FADECs. This proposed superseding AD would require removal of 12 more P/Ns of FADECs. This proposed AD results from 20 additional reports received of loss of thrust control events since AD 2008-16-01 was issued. We are proposing this AD to prevent loss of thrust control of the airplane.

**DATES:** We must receive any comments on this proposed AD by October 23, 2009.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

**FOR FURTHER INFORMATION CONTACT:**

Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [alan.strom@faa.gov](mailto:alan.strom@faa.gov); telephone (781) 238-7143; fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your

comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2008-0821; Directorate Identifier 2008-NE-20-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**Discussion**

The FAA proposes to amend 14 CFR part 39 by superseding AD 2008-16-01, Amendment 39-15619 (73 FR 44628, July 31, 2008). That AD requires removal of certain P/N FADECs. That AD was the result of six loss of thrust control events from the same software fault scenario. That condition, if not corrected, could result in loss of thrust control of the airplane.

**Actions Since AD 2008-16-01 Was Issued**

Since AD 2008-16-01 was issued, we have received 20 additional reports of loss of thrust control events, totaling 26 events to-date. Those loss of thrust control events were due to fuel metering valve feedback faults caused by connector pin micro-arcing. As a result