

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

[61 FR 36282, July 10, 1996]

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

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

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

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

(d) Settlement and final payment for livestock purchased by a packer on a carcass weight or carcass grade and weight basis shall be on actual hot weights. The hooks, rollers, gambrels or other similar equipment used at a packing establishment in connection with the weighing of carcasses of the same species of livestock shall be uniform in weight. The tare shall include only the weight of such equipment.

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

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

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

POULTRY—PACKERS AND LIVE POULTRY DEALERS

§ 201.100 Records to be furnished poultry growers and sellers.

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

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

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

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

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(ii) The method for figuring feed conversion ratios;

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

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

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

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

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

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

(e) *Live poultry purchases.* Each live poultry dealer who purchases live poultry

shall prepare and deliver a purchase invoice to the seller at time of settlement. The purchase invoice shall contain all information necessary to compute payment due the seller. When U.S. Department of Agriculture condemnations or U.S. Department of Agriculture grades, or both, of poultry purchased affect final payment, copies of official U.S. Department of Agriculture condemnation certificates or grading certificates, or both, shall be furnished to the seller at or prior to the time of settlement.

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[54 FR 16356, Apr. 24, 1989; 54 FR 18713, May 2, 1989]

§ 201.108-1 Instructions for weighing live poultry.

Live poultry dealers who operate scales on which live poultry is weighed for purposes of purchase, sale, acquisition, or settlement are responsible for the accurate weighing of such poultry. They shall supply copies of the instructions in this section to all persons who perform weighing operations for them and direct such persons to familiarize themselves with the instructions and to comply with them at all times. This section shall also apply to any additional weighers who are employed at any time. Weighers must acknowledge their receipt of these instructions and agree to comply with them by signing in duplicate, a form provided by the Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration. One copy of this form is to be filed with a regional office of the Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration and the other copy retained by the Agency employing the weighers. The following instructions shall be applicable to the weighing of live poultry on all scales, except that paragraph (c)(1) of this section is only applicable to the weighing of live poultry on vehicle scales.

(a) *Balancing the empty scale.* (1) The scale shall be maintained in zero balance at all times. The empty scale shall be balanced each day before weighing begins and thereafter its zero balance shall be verified before any

poultry is weighed. In addition, the zero balance of the scale shall be verified whenever a weigher resumes weighing duties after an absence from the scale.

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

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

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

(b) *Sensitivity control.* (1) A scale must be sensitive in response to platform loading if it is to yield accurate weights. It, therefore, is the duty of a weigher to assure himself that interferences, weighbeam friction, or other factors do not impair sensitivity. He shall satisfy himself, at least twice each day, that the scale is sufficiently sensitive, and, if the following requirements are not met, he must report the facts to his superior or employer immediately.

(2) A weighbeam scale with a balance indicator is sufficiently sensitive if, when the scale is balanced with the indicator at the center of the target, movement of the fractional poise one graduation will change the indicator rest point ($\frac{1}{4}$ inch (0.25) or the width of the central target area, whichever is greater.

(3) A weighbeam scale without a balance indicator is sufficiently sensitive if, when the scale is balanced with the weighbeam at the center of the trig loop, movement of the fractional poise two graduations will cause the weighbeam to come to rest at the bottom of the trig loop.

(4) Adjustable damping devices are incorporated in balance indicators and in dial scales to absorb the effects of load impact and to bring the indicator to rest. The weigher must be familiar with the location and adjustment of these damping devices and keep them so adjusted that when the indicator is displaced from a position of rest, it will oscillate freely through at least one complete cycle of movement before coming to rest at its original position.

(5) Friction at weighbeam bearings may reduce the sensitiveness of the scale, cause sluggish weighbeam action and affect weighing accuracy. A weigher must inspect the weighbeam assembly daily to make certain that there is clearance between the weighbeam and the pivot bearings.

(6) Interferences or binding of the scale platform, or other "live" parts of the scale, are common causes of weighing inaccuracy. A weigher shall satisfy himself, at the beginning of each weighing period, that all such "live"

parts have sufficient clearance to prevent interference.

(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 be assured 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 on the beam tip, balance indicator, dial or digital indicator while weighing and not be concerned 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 indi-

cator 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 their judgment or action in performing his/her 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 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.

The weigher 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/her 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 their 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, the weigher 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.

[37 FR 4955, Mar. 8, 1972, as amended at 61 FR 36282, July 10, 1996]

§ 201.200 Sale of livestock to a packer on credit.

(a) No packer whose average annual purchases of livestock exceed \$500,000 shall purchase livestock on credit, and no dealer or market agency acting as an agent for such a packer shall purchase livestock on credit, unless: (1) Before purchasing such livestock the packer obtains from the seller a written acknowledgment as follows:

On this date I am entering into a written agreement for the sale of livestock on credit to _____, a packer, and I understand that in doing so I will have no rights under the trust provisions of section 206 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 196, Pub. L. 94-410), with respect to any such credit sale. The written agreement for such selling on credit

Covers a single sale.
Provides that it will remain in effect until (date).
Provides that it will remain in effect until canceled in writing by either party.
(Omit the provisions not applicable.)
Date _____
Signature _____

(2) Such packer retains such acknowledgment, together with all other documents, if any, setting forth the terms of such credit sales on which the purchaser and seller have agreed, and such dealer or market agency retains a copy thereof, in his records for such time as is required by any law, or by written notice served on such person by the Administrator, but not less than two calendar years from the date of expiration of the written agreement referred to in such acknowledgment; and

(3) Such seller receives a copy of such acknowledgment.

(b) Purchasing livestock for which payment is to be made by a draft which is not a check, shall constitute purchasing such livestock on credit within the meaning of paragraph (a) of this section. (See also § 201.43(b)(1).)

(c) The provisions of this section shall not be construed to permit any transaction prohibited by §201.61(a) relating to financing by market agencies selling on a commission basis.

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(Sec. 401, 42 Stat. 168 (7 U.S.C. 221); sec. 409, as added by sec. 7, 90 Stat. 1250 (7 U.S.C. 228b); 7 CFR 2.17, 2.54; 42 FR 35625; Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.); 7 U.S.C. 222 and 228 and 15 U.S.C. 46)

[42 FR 49929, Sept. 8, 1977, as amended at 49 FR 39516, Oct. 9, 1984; 54 FR 37094, Sept. 7, 1989]

PART 202—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE PACKERS AND STOCKYARDS ACT

RULES OF PRACTICE APPLICABLE TO RATE PROCEEDINGS

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AUTHORITY: 7 U.S.C. 228(a); 7 CFR 2.17(e), 2.56.

SOURCE: 43 FR 30510, July 14, 1978, unless otherwise noted.

RULES OF PRACTICE APPLICABLE TO RATE PROCEEDINGS

SOURCE: Sections 202.1 through 202.7 appear at 53 FR 51236, Dec. 21, 1988, unless otherwise noted.

§202.1 Applicability of other rules.

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, 7 CFR part 1, subpart H, are applicable to all rate proceedings under Sections 304, 305, 306, 307 and 310 of the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. 205, 206, 207, 208 and 211, except insofar as those Rules are in conflict with any provision herein.

§202.2 Definitions.

As used in these rules:

(a) *Rate proceeding* means a proceeding involving the determination and prescription of any rate or charge made or proposed to be made for any stockyard service furnished at a stockyard by a stockyard owner or market agency, or a proceeding involving any rule, regulation or practice affecting any such rate or charge; and

(b) *Administrator* means the Administrator of the Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs) (GIPSA), or any officer or employee of GIPSA to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Administrator.

§202.3 Institution of proceedings.

(a) *Informal complaint*. Any interested person desiring to complain of the lawfulness of any rate or charge made or proposed to be made for any stockyard service furnished at a stockyard by a stockyard owner or market agency, or rule, regulation or practice affecting any such rate or charge, may file an informal complaint with the Administrator.