

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 9 CFR Part 201

RIN 0580-AB03

#### Registration, Five-Year Terms

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations under the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act), regarding the registration of market agencies and dealers. Under the current regulations, there is no expiration date or renewal process for the registration of a market agency or dealer under the P&S Act. Under this final rule, a market agency or dealer's registration will not expire, provided that the market agency or dealer timely files its annual reports with GIPSA. This action will further assist USDA in regulating the business operations of market agencies and dealers through the effective enforcement of the P&S Act.

**DATES:** *Effective Date:* March 11, 2010.

**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. 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 write regulations necessary to carry out the provisions of the P&S Act.

Section 303 of the P&S Act (7 U.S.C. 203) requires that market agencies and dealers register with USDA. Section 201.10 of the regulations (9 CFR 201.10) currently requires that any person operating or desiring to operate as a market agency or dealer must apply for registration (Form P&SP 1000). When applying for a registration, the applicant must certify that its financial condition meets the P&S Act's requirements, list its type of business organization, state whether it will operate on a calendar year or fiscal year basis, identify the character of its business, and name the species of livestock it will handle. If registration is granted, a market agency or dealer receives an acceptance letter from GIPSA, which includes the registration number and the registration's effective date.

Under current § 201.10(b) of the P&S Act regulations (9 CFR 210.10(b)), GIPSA's Administrator may deny a registration if the Administrator believes that the applicant is unfit to engage in the business of a market agency and/or dealer. If a registration is denied, however, the applicant may request a formal hearing before a USDA administrative law judge who decides if the Administrator's decision should be overturned. Once issued by GIPSA, however, the registration does not expire.<sup>1</sup> After a registration is granted, the registration becomes inactive if the registrant notifies GIPSA that it has ceased business operations. Otherwise, a registration is effective indefinitely.

We have found that many market agencies and dealers registered under the P&S Act do not provide GIPSA with updates of information about their business operations. Without a registrant's current and accurate business information, we found that GIPSA could not adequately investigate complaints received from livestock sellers about a registrant's business practices, and therefore could not effectively enforce the P&S Act. As a result, GIPSA issued a notice of proposed rulemaking in the **Federal Register** on December 15, 2008 (73 FR 242), seeking comment on amending the regulations under the P&S Act to establish a 5-year time period for

registrations, as well as renewal procedures. We also proposed a requirement that regulated entities file applications for registration and renewal in the geographic area where their primary place of business is located. The comment period ended on February 17, 2009.

#### Discussion of Comments and Final Action

GIPSA received one comment from a trade organization representing over 800 livestock auctions, dealers and related business members of the regulated industry. After reviewing the issues raised in this comment, we have determined that we will modify the proposed amendments in the final rule as noted below:

The commenter asserted that the annual reports required under section 201.97 of the P&S Act regulations (9 CFR 201.97) provide sufficient information on registrants' business operations. The commenter suggested that if there is additional information GIPSA needs, GIPSA should redesign the annual report to gather the necessary information. Upon reconsideration, GIPSA agrees with the commenter and will not impose any additional burden on entities by requiring a 5-year registration period. Instead, registrations will continue in effect indefinitely and only expire if a registered entity fails to timely file the annual report required under section 201.97 of the P&S Act regulations (9 CFR 201.97). GIPSA will therefore issue a final rule that does not establish a 5-year term for registrations.

The commenter also concluded that GIPSA's data management system is outdated and badly managed, after finding inconsistencies between its membership records and those of GIPSA. The commenter suggested that GIPSA improve its data management system as an alternative to requiring a 5-year registration term. Independent of this comment, GIPSA has already implemented an improved data management system that allows for better tracking and uniform oversight of regulated entities. This system consolidates information about registrants into one database, and includes registration information, annual report information, and records regarding compliance and violations. In addition, GIPSA created a new work unit whose sole function is to

<sup>1</sup> However, GIPSA may suspend a registration for cause.

administer the annual reporting requirements under the P&S Act and regulations.

The commenter further suggested that rather than require registrants to renew their registrations every 5 years, GIPSA could require that registrants provide notification when they plan to cease operating. GIPSA's objective in proposing to amend the registration requirements is to better account for those entities actively operating as dealers or market agencies. Relying on registrants to notify GIPSA when they cease operating would not provide complete and accurate information. GIPSA now believes that it would be able to maintain accurate records of entities currently operating subject to the P&S Act, without imposing new and additional burdens on registrants, provided that they file their annual reports timely.

The commenter also stated that the new requirements would not improve enforcement of the P&S Act; they would only interfere in the business of those who are already in compliance with the P&S Act. We disagree with the commenter's assertions that having registered entities provide information regarding their business is a new burden on registered entities. Persons operating subject to the P&S Act are required to report certain information about their current business operations. This issue, however, is now moot since we are not implementing the proposed requirement to renew registrations every 5 years.

The commenter also requested that a timeframe be established for GIPSA to process applications to ensure that registrations do not expire while waiting for agency action. This issue, however, is also now moot since we are not implementing the proposed requirement to renew registrations every 5 years. Again, registrations would continue in effect indefinitely, and only expire if a registered entity fails to timely file the annual report required under section 201.97 of the P&S Act regulations (9 CFR 201.97).

Finally, the commenter stated that if a registration is denied, GIPSA should fully describe the reasons for the denial. By not implementing the proposed requirement to renew registrations every 5 years, GIPSA will not be routinely considering whether to approve or deny registration renewal applications. Registrants, whose registrations expire because the required annual report is not filed within the time period allowed, will be required to file a new application for registration in order to continue in business. In cases of new registrations where the Administrator has reason to believe an applicant is

unfit to conduct business under the P&S Act, the applicant will have an opportunity for a hearing, as the regulations currently allow, in which the applicant can show cause why its application should not be denied.

Based on the comment discussed above, we are therefore modifying proposed 201.10(e) (9 CFR 201.10(e)) in this final rule to provide that registrations continue indefinitely provided that the annual report is timely filed as required under section 201.97 of the P&S Act regulations (9 CFR 201.97). Failure to file an annual report by the date required in section 201.97 of the P&S Act regulations (9 CFR 201.97) will result in the issuance of a default notice. Thirty days after receipt of the default notice, a registrant's registration will expire if GIPSA does not receive the required annual report. If the Administrator has reason to believe that an applicant is unfit to engage in the activity for which the applicant seeks registration, a proceeding such as described in existing paragraph 201.10(b) (9 CFR 201.10(b)) shall be promptly initiated. This includes cases of new applications for registration as well as those filed by applicants whose registrations expired due to untimely filing of an annual report.

The one comment received did not address the other amendments to § 201.10 contained in the proposed rule. Therefore, the proposed amendments to § 201.10(a)–(d), and new paragraph (f) are finalized without change.

#### **Executive Order 12866 and Regulatory Flexibility Act**

The Office of Management and Budget (OMB) has designated this final rule as not significant for the purposes of Executive Order 12866.

We have determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). Most of the entities to which this rule applies do meet the applicable size standard for small entities in the Small Business Administration (SBA) regulations (13 CFR 121.201). For the North American Industry Classification System, codes that apply to animal production (subsector 112), the SBA size standard is \$750,000 in average annual receipts. Based on the information that we have on bonded registrants, about 75 percent of the approximately 5,400 entities to which this final rule applies have annual receipts of less than \$750,000. While the proposed rule would have imposed a burden of 30 minutes of

effort to complete the application to renew registration every 5 years, GIPSA has determined that this final rule will impose no new burden since registrants must already submit up-to-date business information on their annual reports, which is covered under the currently approved OMB information collection 0580–0015. Only if a new application is filed after a registration expires due to untimely filing of an annual report will the estimated 30 minutes of effort to complete a registration application be necessary. Therefore, we have determined that this final rule will not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. This final rule will 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 final rule.

#### **Paperwork Reduction Act**

In accordance with 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 final rule were approved under OMB number 0580–0015 on February 21, 2008, and expire on February 28, 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.

■ For the reasons set forth in the preamble, we are amending 9 CFR part 201.10 as follows:

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

**Authority:** 7 U.S.C. 181–229c.

■ 2. Section 201.10 is amended to revise paragraphs (a) through (d) and to add paragraphs (e) and (f) to read as follows:

**§ 201.10 Requirements and Procedures.**

(a) Every person operating or desiring to operate as a market agency or dealer as defined in section 301 of the Act (7 U.S.C. 201) must apply for registration. To apply, such persons must file a properly executed application for registration on a form furnished by the Agency. Each applicant must file an application for registration with the regional office for the region where the applicant has his or her primary place of business, and file and maintain a bond as required in §§ 201.27 through 201.34 (9 CFR 201.27 through 201.34).

(b) If, upon review of an application, the Administrator has reason to believe the applicant is unfit to engage in the activity for which application has been made, a proceeding shall be instituted promptly affording the applicant the opportunity for a full hearing, in accordance with the Department's Rule of Practice Governing Formal Adjudicatory Proceedings (7 CFR Subpart H), to show cause why the application for registration should not be denied. If after the hearing the application is denied, as soon as the issue(s) that formed the basis of the denial have been remedied, the applicant may file a new application for registration.

(c) Any person regularly employed on salary, or other comparable method of compensation, by a packer to buy livestock for such packer is subject to the regulation requirements of this section. Such person must be registered as a dealer to purchase livestock for slaughter on behalf of the packer.

(d) Every person clearing or desiring to clear the buying operations of other registrants must apply for registration as a market agency providing clearing services by filing a properly executed application on a form furnished by the Agency, and file and maintain a bond as required in §§ 201.27 through 201.34.

(e) If an application for registration is granted, a market agency or dealer receives an acceptance letter from the Agency that issues the registration number and the effective date of the registration. Each registration issued in accordance with this section will not expire, provided that the registrant timely files its annual report with the Agency as required in section 201.97. Failure of a registrant to file an annual report by the date required in section 201.97 will result in the issuance of a default notice. Thirty days after receipt of the default notice, the registration will expire if the Agency does not receive an annual report from the registrant. A registrant who fails to renew its registration in a timely manner, and continues to operate, will

be engaged in business subject to the Act without a valid registration in violation of section 303 of the Act (7 U.S.C. 203).

(f) Registrations that expire during a period of suspension imposed as a result of an order or injunction may be renewed, but the renewal will not be effective until the specified suspension period terminates.

**J. Dudley Butler,**

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

[FR Doc. 2010-2845 Filed 2-8-10; 8:45 am]

**BILLING CODE 3410-KD-P**

**DEPARTMENT OF COMMERCE****Bureau of Industry and Security****15 CFR Part 740**

[Docket No. 0812241645-91422-01]

**RIN 0694-AE52**

**Revisions to License Exception GOV To Provide Authorization for Exports and Reexports of Commodities for Use on the International Space Station (ISS)**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Export Administration Regulations (EAR or Regulations) by revising an existing license exception to provide a new authorization for exports and reexports of certain commodities subject to the EAR when those commodities are intended for use on the International Space Station (ISS). This rule establishes specific terms and conditions with which exports or reexports must comply in order to take advantage of the new authorization. For example, an export or reexport undertaken in accordance with the new authorization must be consigned to an eligible recipient involved in the launch of the commodity to the ISS. This new authorization is limited to commodities that are subject to the EAR that are needed at a launch destination outside the United States on short notice. This rule defines 'short notice' as a requirement to have a commodity manifested and at the scheduled launch site for hatch-closure (final stowage) no more than forty-five (45) days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and

purpose for use of the commodity on the ISS. This rule defines 'hatch-closure (final stowage)' as the final date specified by a launch provider by which items must be at a specified location in a launch country in order to be included on a mission to the ISS. BIS has determined there is a low risk of diversion and a high benefit for authorizing these types of transactions to proceed under a license exception.

**DATES:** *Effective Date:* This rule is effective February 9, 2010. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

**ADDRESSES:** You may submit comments, identified by RIN 0694-AE52, by any of the following methods:

*E-mail:* [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include "RIN 0694-AE52" in the subject line of the message.

*Fax:* (202) 482-3355. Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.

*Mail or Hand Delivery/Courier:*

Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694-AE52.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to [Jasmeet\\_K\\_Seehra@omb.eop.gov](mailto:Jasmeet_K_Seehra@omb.eop.gov), or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.*, RIN 0694-AE52)—all comments on the latter should be submitted by one of the three methods outlined above.

**FOR FURTHER INFORMATION CONTACT:** Gene Christiansen, Senior Engineer/Licensing Officer, Office of National Security and Technology Transfer Controls, telephone: (202) 482-2984.

**SUPPLEMENTARY INFORMATION:****Background**

This rule adds a new paragraph (d) to License Exception GOV in 15 CFR 740.11 (Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV)) to provide authorization for the export or reexport of certain commodities subject to the