

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 9 CFR Part 201

RIN 0580-AB01

#### Swine Contractors

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adding “swine contractors” to the list of regulated entities subject to specific regulations issued under the Packers and Stockyards Act (P&S Act or Act) (7 U.S.C. 181–229). In 2002, Congress added swine contractors as entities regulated under the P&S Act. Specifically, we are amending the regulations to clarify that swine contractors are prohibited from knowingly circulating misleading reports about market conditions or prices; that they are required to provide business information to authorized USDA personnel; and, that they are required to permit authorized USDA personnel to inspect their business records and facilities. We are also amending the regulations to clarify that agents and USDA employees are prohibited from unauthorized disclosure of business information obtained from swine contractors. These changes will assist swine contractors and swine production contract growers with determining which regulations under the P&S Act apply to swine contractors. The inclusion of swine contractors will help us better enforce the provisions of the P&S Act.

**DATES:** *Effective Date:* November 20, 2008.

**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.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under authority of the Packers and Stockyards Act, 1921, (P&S Act or Act) (7 U.S.C. 181–229).

The Grain Inspection, Packers and Stockyards Administration (GIPSA) enforces the Packers and Stockyards (P&S) Act of 1921 (the P&S Act). Under authority granted the Secretary of Agriculture (Secretary) and delegated to us, we are authorized (7 U.S.C. 228) to make those regulations necessary to carry out the provisions of the P&S Act.

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the P&S Act to define and add “swine contractors” as a regulated entity. A swine contractor is defined 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.” (7 U.S.C. 182 (12)).

Adding swine contractors to specific regulations under the P&S Act will assist swine contractors and swine production contract growers with determining which regulations apply to them. It will also make it easier for GIPSA to identify potential violations and enforce the provisions of the P&S Act and regulations.

#### Comments

We published a proposed rule in the **Federal Register** on February 8, 2008 (73 FR 7482), seeking to amend four sections of the P&S Act regulations (9 CFR 201), specifically sections 201.53, 201.94, 201.95 and 201.96, to add “swine contractors” to the list of entities subject to those regulations. The comment period for the proposed rule ended on April 8, 2008.

We received one comment on the proposed rule from Mr. Bryan Black, President of the National Pork Producers Council (NPPC), located in Washington, DC. Mr. Black pointed out that although NPPC was opposed to the inclusion of swine contractors as covered parties under the P&S Act in the 2002 Farm Bill, NPPC agrees with GIPSA’s position that regulations are

needed to clarify the positions of swine contractors and contract growers as they relate to the Act. Mr. Black further stated that having a clear set of rules will help all parties by delineating responsibilities and limitations, and that the proposed rule appears to fairly represent the 2002 law.

In his statement, however, Mr. Black urged USDA to define as clearly as possible those activities that violate the Act. He also recommended that any rules promulgated by USDA giving government agents access to business records and activities be made as narrow as possible and that access to records should be limited to those records and information that is specific to whatever claim is being investigated.

In response to Mr. Black’s concern regarding GIPSA’s access to swine contractors’ business records, we point out that Section 6 of the Federal Trade Commission Act (7 U.S.C. 222), gives us broad authority to gather and compile information for various purposes under the P&S Act. Those purposes include, but are not limited to, conducting investigations into the organization, business, conduct, practices, and management of entities subject to the P&S Act. While the rule will provide our investigators broad access to swine contractors’ records, it will also protect the information that is gathered from unauthorized release, except under the limited circumstances listed in 9 CFR 201.96. We are therefore making no change to the final rule based on Mr. Black’s comments.

#### Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget designated this rule as not significant for the purposes of Executive Order 12866.

We determined that this 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 rule will affect swine contractors. However, most of these entities are either slaughterers or processors of swine with more than 500 employees or producers with more than \$750,000 in annual sales. Therefore, they do not meet the applicable size standards for small entities in the Small Business Act (13 CFR 121.201). A 2007 study of U.S. pork producers found that firms that market more than 50,000 head of swine per year

account for nearly all of contracted swine production in the U.S.

In accordance with 5 U.S.C. 605 of the Regulatory Flexibility Act, we are not providing a final regulatory flexibility analysis because this rule will not have a significant economic impact on a substantial number of small entities. We do expect that small swine production contract growers will benefit indirectly from the proposed amendments, which should provide fairness in the marketing of swine and swine products.

#### Executive Order 12988

This rule was reviewed under Executive Order 12988, Civil Justice Reform. We do not intend the rule to have retroactive effect. The 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 rule.

#### Paperwork Reduction Act

This rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It does not involve collection of new or additional information by the federal government.

#### 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

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Trade practices.

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

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

■ 1. Revise the authority citation for part 201 to read as follows:

**Authority:** 7 U.S.C. 182, 222, and 228, and 7 CFR 2.22 and 2.81.

■ 2. Revise § 201.53 to read as follows:

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

No packer, swine contractor, live poultry dealer, stockyard owner, market agency, or dealer shall knowingly make,

issue, or circulate any false or misleading reports, records, or representation concerning the market conditions or the prices or sale of any livestock, meat, or live poultry.

■ 3. Revise § 201.94 to read as follows:

#### § 201.94 Information as to business; furnishing of by packers, swine contractors, live poultry dealers, stockyard owners, market agencies, and dealers.

Each packer, swine contractor, live poultry dealer, stockyard owner, market agency, and dealer, upon proper request, shall give to the Secretary or his duly authorized representatives in writing or otherwise, and under oath or affirmation if requested by such representatives, any information concerning the business of the packer, swine contractor, live poultry dealer, stockyard owner, market agency, or dealer which may be required in order to carry out the provisions of the Act and regulations in this part within such reasonable time as may be specified in the request for such information.

■ 4. Revise § 201.95 to read as follows:

#### § 201.95 Inspection of business records and facilities.

Each stockyard owner, market agency, dealer, packer, swine contractor, and live poultry dealer, upon proper request, shall permit authorized representatives of the Secretary to enter its place of business during normal business hours and to examine records pertaining to its business subject to the Act, to make copies thereof and to inspect the facilities of such persons subject to the Act. Reasonable accommodations shall be made available to authorized representatives of the Secretary by the stockyard owner, market agency, dealer, packer, swine contractor, or live poultry dealer for such examination of records and inspection of facilities.

■ 5. Revise § 201.96 to read as follows:

#### § 201.96 Unauthorized disclosure of business information prohibited.

No agent or employee of the United States shall, without the consent of the stockyard owner, market agency, dealer, packer, swine contractor, or live poultry dealer concerned, divulge or make known in any manner, any facts or information regarding the business of such person acquired through any examination or inspection of the business or records of the stockyard owner, market agency, dealer, packer, swine contractor, or live poultry dealer, or through any information given by the stockyard owner, market agency, dealer, packer, swine contractor, or live poultry dealer pursuant to the Act and regulations, except to such other agents or employees of the United States as

may be required to have such knowledge in the regular course of their official duties or except insofar as they may be directed by the Administrator or by a court of competent jurisdiction, or except as they may be otherwise required by law.

**Randall D. Jones,**

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

[FR Doc. E8–24945 Filed 10–20–08; 8:45 am]

**BILLING CODE 3410-KD-P**

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Part 570

[BOP Docket No. 1151-I]

RIN 1120-AB51

#### Pre-Release Community Confinement

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) revises current regulations on pre-release community confinement to conform with the requirements of the Second Chance Act of 2007, approved April 9th, 2008 (Pub. L. 110–199; 122 Stat. 657) (“Second Chance Act”).

**DATES:** This rule is effective October 21, 2008. Comments are due by December 22, 2008.

**ADDRESSES:** Submit comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at <http://www.regulations.gov>. You may also comment via the Internet to the Bureau at [BOPRULES@BOP.GOV](mailto:BOPRULES@BOP.GOV) or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically, you must include the BOP Docket No. in the subject box.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

#### SUPPLEMENTARY INFORMATION:

##### Posting of Public Comments

Please note that all comments received are considered part of the public record and are available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name,