

# 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-AB03

#### Registration, Five-Year Terms

**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 the regulations under the Packers and Stockyards Act, 1921 as amended (7 U.S.C. 181 *et seq.*) (P&S Act or 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 Act. The proposed amendment would establish a 5-year term for registrations and renewal procedures. This action would assist USDA in regulating the business operations of market agencies and dealers through the effective enforcement of the P&S Act.

**DATES:** Written or electronic comments received by February 17, 2009 will be considered prior to issuance of a final rule.

**ADDRESSES:** You may submit written or electronic comments to:

- *Written:* Mail to the attention of Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643-S, Washington, DC 20250-3604.
- *Fax:* (202) 690-2173.
- *Internet:* Go to <http://www.regulations.gov>

and follow the on-line instruction for submitting comments.

Comments should be identified as "P&S, Registration, 5-Year Term Comments," 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 Packers and Stockyards Act of 1921 (7 U.S.C. 181-229) (P&S Act or 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 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 Act's requirements, list its type of business organization, whether it will operate on a calendar year or fiscal year basis, identify the character of its business and 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 will decide 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 us 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 us with updates of information about their business operations. Without a registrant's current and accurate business information, we cannot adequately investigate complaints received from livestock sellers about a registrant's business practices, and we therefore cannot effectively enforce the Act. Also, as a part of GIPSA's oversight of the livestock industry, we conduct periodic onsite compliance reviews of the business operations of registrants. Requiring registrants to renew their registration would require applicants to inform GIPSA periodically whether the entities are still operating and the type of operation being conducted. GIPSA would then be able to focus its oversight activities on actively operating businesses and better manage the pool of regulated entities that would be scheduled for compliance investigations over a 5-year period.

Because no provision for expiration of a registration currently exists in the P&S Act or regulations, a registration can only be suspended or be considered inactive. However, if a registration is not renewed as required by this proposal, the registration would expire. A market agency or dealer that wants to resume operating after its registration has expired would have to file a new application for registration. The proposed renewal process would give GIPSA's Administrator the ability to consider whether a current or former registrant continues to be fit to engage in business subject to the Act.

In 2007, a total of 6,931 entities were registered with GIPSA as market agencies and/or dealers. Most of these entities, approximately 5,400, have been registered for more than 5 years. Therefore, in order to comply with the proposed regulation, these registrants would have to file an application for renewal of registration during the first year the proposal became effective. If these registrants failed to renew their registration timely, their registrations

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

would expire. If all 5,400 registrants filed renewal applications in 1 year, GIPSA's regional offices would be overwhelmed with applications, and it would likely take 6 months for all the registrations to be renewed. In the interim, a registrant would either operate without being registered in violation of the Act, or suspend its business operations until it received its renewed registration. We would need to phase-in the implementation of the new renewal requirement so that GIPSA could process the renewal applications in an efficient and effective way. This would provide registered entities with sufficient notice of the renewal requirement and also provide them a grace period in which to renew while continuing operations.

### Description of Proposed Changes to the Regulations

Section 201.10 of the regulations (9 CFR 201.10) establishes the requirements and procedures for the registration of a market agency and/or dealer. Our proposed amendments to § 201.10 would add two paragraphs regarding the expiration of registrations. New paragraph (e) would change the time period for which a registration is valid from an indefinite period to a 5-year period. A registration that is not renewed timely would expire automatically after 5 years. New paragraph (e) also establishes the phased-in renewal process. The renewal process would give us the ability to review a market agency and/or a dealer's business information to determine if it continues to be fit to engage in business subject to the Act. New paragraph (f) would specify that GIPSA would renew registrations for applicants whose registration is suspended under § 201.11 (9 CFR 201.11, Suspended registrants; officers, agents and employees) but the registration would not be effective until the suspension period terminates.

Because some firms operate in multiple regions, we are also proposing to amend paragraph (a) of § 201.10 (9 CFR 201.10) to require that firms file applications for registration (and registration renewals) with the GIPSA regional office located in the geographic area where their primary place of business is located, rather than the area where they propose to operate. If we have questions about a firm's registration or its business records, the regional office would contact the firm's primary place of business. This would also make § 201.10(a) consistent with § 201.28 of the regulation (9 CFR 201.28) that requires that duplicates of bonds be filed with the GIPSA regional office

covering the area where the registrant is located.

We also propose to make minor changes to the existing paragraphs in this section to make the regulation clearer. This proposal would not change the registration form that applicants complete or the information required of the applicants on the form. We would, however, add a new "renewal" check box in the section of the form to be completed by GIPSA personnel.

### Proposed Phased Implementation of Final Rule

We would implement the proposed 5-year registration amendment over a 5-year period, starting with the date that the final rule becomes effective. We would require that 20 percent of existing registrations be renewed in the first year after the rule becomes effective, with 20 percent renewed in each of the 4 subsequent years. During that first year, registrants whose registration numbers end in the digit "0" or "5" would be required to renew. We propose that the renewal be submitted at the same time as the annual report that is required by § 201.97 of the regulations. For example, registrations issued in the year 2000 and assigned a number ending in the digit "0" or "5" would be required to be renewed no later than April 15, 2009; or, if the registrant's records are kept on a fiscal year basis, no later than 90 days after the close of the registrant's 2008 fiscal year.

The implementation of the proposed regulatory amendment would be scheduled according to the last digit of each registrant's registration number as follows:

- Registration number ending in the digit "0" or "5": April 15, 2009, or 90 days after the close of the 2008 fiscal year.
- Registration number ending in the digit "1" or "6": April 15, 2010, or 90 days after the close of the 2009 fiscal year.
- Registration number ending in the digit "2" or "7": April 15, 2011, or 90 days after the close of the 2010 fiscal year.
- Registration number ending in the digit "3" or "8": April 16, 2012, or 90 days after the close of the 2011 fiscal year.
- Registration number ending in the digit "4" or "9": April 15, 2013, or 90 days after the close of the 2012 fiscal year.

Following this 5-year phased-in implementation period, registration renewals would be due 5 years after the registration was last renewed, rather than the last digit of the registration

number. For example, the registrants who renewed their registrations by April 15, 2009, would be required to renew again by April 15, 2014. Registrants would keep the same registration number for subsequent renewals.

On or about the first business day of each new calendar year, GIPSA regional offices would mail to each registrant in its respective regional territory whose registration would expire in the succeeding year a copy of the previously filed registration application and a blank renewal application. The registrant would then be required to complete the renewal application with its current business information and return it to the appropriate GIPSA regional office at the same time the registrant's annual report is due, as specified in the regulations (9 CFR 201.97). That would mean the renewal application would be due by April 15th of the following calendar year or no later than 90 days after the end of the fiscal year. If a registration is not renewed and expires, we would provide a registrant a 2-week grace period to submit a renewal application to us before notifying it by mail that its registration had expired. In our letter, we would also notify the registrant that operating without a valid and effective registration is a violation of the P&S Act.

We do not need to phase-in implementation of the proposed amendment concerning suspended registrations. That proposed amendment would take effect on the effective date of the final rule (proposed 9 CFR 201.10(f)).

### Options Considered

We considered several different alternatives to these proposed regulatory changes. For the 5-year registration renewal, these alternatives included issuing policy guidance to GIPSA employees and making a public announcement regarding the importance that market agencies and/or dealers submit to GIPSA accurate and current business information. We do not believe that either of these options would ensure that we have accurate and current information on registered entities.

### Executive Order 12866 and Regulatory Flexibility Act

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

We have 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 (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 rule applies have annual receipts of less than \$750,000. The proposed rule will impose a burden of 30 minutes of effort to complete the application to renew registration every 5 years. Thirty minutes (.5 hours) is the current burden estimate for the registration application form under the currently approved OMB information collection 0580-0015. We have determined, however, that this does not represent a significant economic impact.

In accordance with the RFA, we are not required to provide an initial regulatory flexibility analysis because this proposed rule will not have a significant economic impact on a substantial number of small entities. Because it would impose a small burden on a substantial number of small entities, we did consider alternatives to reduce that burden. One alternative would be to exempt small businesses from this proposed rule. That alternative, however, would not meet our responsibility to enforce the registration requirements of the P&S Act, which apply to all market agencies and dealers. We considered whether an electronic online form would reduce the burden on small entities. Since small entities may not have reliable online Internet access, and the form would take as long to fill out online as on paper, this would not reduce the burden on small entities. Of all the feasible alternatives considered, we have determined that the proposed approach to require the renewal of registration every 5 years represents the least burden on small entities.

For new registrants, the burden would remain the same as under the current regulation given that we are not changing the application form.

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, registrants.

#### **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 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 record keeping requirements that are covered by this proposed 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 propose to amend 9 CFR part 201 as follows:

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

1. The authority citation continues to read as follows:

**Authority:** 7 U.S.C. 203, 204, 207, 217a, 222, and 228.

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 expires 5 years after the year of issuance. If a registrant intends to continue to operate in a manner described in paragraph (a), (c) or (d) of this section, its registration must be renewed by filing an application for renewal of registration as prescribed in paragraph (a) of this section that includes any applicable updated information. 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).

(1) Between (INSERT EFFECTIVE DATE OF THE FINAL RULE) and December 31, 2013, applications for renewal of registration must be filed in accordance with the chart below:

Last digit of Registration No.	Year of renewal	Next renewal due date
0 or 5 .....	2009, by April 15 <sup>1</sup> .....	2014, by April 15. <sup>1,2</sup>
1 or 6 .....	2010, by April 15 .....	2015, by April 15.
2 or 7 .....	2011, by April 15 .....	2016, by April 15.
3 or 8 .....	2012, by April 15 .....	2017, by April 15.
4 or 9 .....	2013, by April 15 .....	2018, by April 15.

<sup>1</sup> However, if records are kept on a fiscal year basis, renewal is due by 90 days after the close of the fiscal year.

<sup>2</sup> For all dates in this column, due date for renewal application is without regard to last digit of registration number.

(2) Beginning January 14, 2014, all registrations must be renewed every 5 years by April 15 of the calendar year in which registration expires. (See notes 1 and 2 above.)

(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.

\* \* \* \* \*

**Terry D. Van Doren,**

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

[FR Doc. E8-29652 Filed 12-15-08; 8:45 am]

BILLING CODE 3410-KD-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-1311; Directorate Identifier 2007-NE-48-AD]

RIN 2120-AA64

#### Airworthiness Directives; Honeywell International Inc., T5313 and T5317 Series Turboshift Engines

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

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

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Honeywell International Inc., T5313 and T5317 series turboshift engines. This proposed AD would require initial and repetitive visual inspections and initial and repetitive ultrasonic inspections. This proposed AD results from eight instances of cracks in combustion chamber housings (CCHs). Two of the instances resulted in an engine shutdown during flight. We are proposing this AD to detect cracks in the CCH, which could result in rupture of the CCH, leading to loss of engine power and damage to the helicopter.

**DATES:** We must receive any comments on this proposed AD by February 17, 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.

You can get the service information identified in this proposed AD from Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072-2181, U.S.A.; telephone (800) 601-3099 (U.S.A.) or (602) 365-3099 (International), Web site: <http://portal.honeywell.com/wps/portal/aero>.

**FOR FURTHER INFORMATION CONTACT:**

Robert Baitoo, Aerospace Engineer, Los Angeles Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712-4137; e-mail: [robert.baitoo@faa.gov](mailto:robert.baitoo@faa.gov); telephone (562) 627-5245; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2008-1311; Directorate Identifier 2007-NE-48-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**

We have received reports of eight instances of cracks developing in CCHs, part numbers (P/Ns) 1-130-610-05 and 1-130-610-12. Two of the instances resulted in an engine shutdown during flight. The cracks developed between the seam welds on the rear outer flange, in the angled bend area, forward of the fuel manifold mounting flange. Fatigue cracking in the "doubler detail" develops from the inside of the CCH, typically starting from corrosion pitting. There have been several instances in which a crack was found during maintenance activities or preflight inspection of the engine. In one instance, with a previously weld-repaired CCH (assumed to be a repair of a crack), additional fatigue cracks grew sufficiently to result in a loss of CCH integrity, subsequent in-flight engine shutdown, and significant airframe damage. A previously weld-repaired CCH has a high potential for additional cracks that might or might not be visible. This condition, if not corrected, could result in rupture of the CCH