



Billing Code 3410-KD-U

## **DEPARTMENT OF AGRICULTURE**

### **Grain Inspection, Packers and Stockyards Administration**

#### **9 CFR Part 201**

#### **Market Agencies Selling on Commission; Purchases from Consignment**

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

**ACTION:** Request for information.

**SUMMARY:** The United States Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is seeking comments from the public regarding regulations issued under the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act). GIPSA regulations address circumstances under which a market agency is allowed to sell livestock on a commission basis to its owners, officers, and employees. There may be some need to update this regulation to address current marketing practices. GIPSA would like to determine whether additional information is needed in clarifying the circumstances under which key employees of the market agency, those designated as an auctioneer, weighmaster, or salesman, may purchase livestock.

**DATES:** We will consider comments we receive by **[insert date 60 days after date of publication in the FEDERAL REGISTER]**.

**ADDRESSES:** We invite you to submit comments on this request for information. You may submit comments by any of the following methods:

- E-Mail: [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov).
- Mail: M. Irene Omade, GIPSA, USDA, 1400 Independence Avenue, SW, Room 2542A-S, Washington, DC 20250-3613.
- Fax: (202) 690-2173
- Hand Delivery or Courier: M. Irene Omade, GIPSA, USDA, 1400 Independence Avenue, SW, Room 2542A-S, Washington, DC 20250-3613.
- Internet: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

**Instructions:** All comments should make reference to the date and page number of this issue of the *Federal Register*. Regulatory analyses and other documents relating to this action will be available for public inspection in Room 2542A-S, 1400 Independence Avenue, SW, Washington, DC 20250-3613 during regular business hours. All comments will be available for public review in the above office during regular business hours (7 CFR 1.27(b)). Please call the Management and Budget Services staff of GIPSA at (202) 720-7486 to arrange a viewing of comments.

**FOR FURTHER INFORMATION CONTACT:** S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW, Washington, DC 20250-3646, (202) 720-7363, [s.brett.offutt@usda.gov](mailto:s.brett.offutt@usda.gov).

**SUPPLEMENTARY INFORMATION:**

GIPSA enforces the P&S Act. Under the authority granted to the Secretary of Agriculture (Secretary) and delegated to GIPSA, the Packers & Stockyards Program (P&SP) is authorized (7 U.S.C. 228) to make regulations necessary to carry out the provisions of the P&S Act. Section 312 (7 U.S.C. 213) of the P&S Act makes it unlawful

for markets to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with the marketing, buying, or selling of livestock on a commission basis. Section 307 (7 U.S.C. 208) of the P&S Act makes it the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices with respect to the furnishing of stockyard services and makes every unjust, unreasonable, or discriminatory regulation or practice prohibited and unlawful. Section 201.56 (9 CFR 201.56) of the regulations issued under the P&S Act explains when and under what circumstances market agencies, individuals, or firms affiliated with a market agency, may purchase consigned livestock from sales conducted by the market agency.

Section 201.56 was amended in October 1993 [58 FR 52886]. Since then only a minor technical amendment has been made to Section 201.56. This amendment revised the Office of Management and Budget control number [68 FR 75388, December 31, 2003]. GIPSA is considering whether to update paragraph (c).

Section 201.56(c) of the regulations recognizes “auctioneers,” “weighmasters,” and “salesmen” as key employees of market agencies. Key employees are those market agency employees whose duties involve performing key functions (*i.e.*, functions involving determinations or decisions directly affecting the interests of consignors).

Individuals performing key functions for a market agency are restricted to a greater degree as to the purchases they may make from consignments to the market. Section 201.56(c) of the regulations currently states that key employees may not purchase livestock out of consignment for their own account (personal or business) for any purpose. Key employees may still purchase livestock in the name of the market agency;

for example, key employees can bid in the name of the market agency to make market support purchases. Market support purchases are purchases made in the name of the market agency when the market agency believes that the highest bid does not reflect the true market value of the livestock being offered for sale. Key employees may also purchase livestock in the market agency's name for the market agency's livestock dealer account. Market agencies and their owners, officers, agents, non-key employees, and firms in which these individuals have an ownership or financial interest may purchase livestock out of consignments for any purpose. Only those employees designated as key employees may not purchase livestock for their own accounts.

In forty different locations within the regulations promulgated under the P&S Act, GIPSA refers to the livestock scale operator as the "weigher." The regulations refer to the scale operator as the "weighmaster," only twice. Section 201.56(c) is one of the two exceptions. To our knowledge there is no difference meant or intended between the two terms. For the sake of consistency, GIPSA is considering changing "weighmaster" to "weigher" in the list of key employees.

GIPSA is also considering the need to retain "salesmen" on the list of key employees. Historically, salesmen have been owners or employees of market agencies engaged in selling livestock on a commission basis in privately negotiated sales. Presently we know of no market agencies selling livestock through privately negotiated sales. The stockyards in which privately negotiated sales occurred now sell livestock in public auctions. While some employees may have retained a "salesman" job title, these employees no longer perform those functions that made them key employees.

GIPSA is requesting comments from livestock industry representatives that address the following:

- 1) Which of the following should be included as a key employee, and why:
  - a) Auctioneer
  - b) Clerk of Sale
  - c) Ringmen
  - d) Salesmen
  - e) Weighmaster/Weigher
  - f) Manager or Owner
- 2) If weighers are otherwise considered key employees, should a weigher be allowed to bid on livestock when:
  - a) The market scale is equipped with a digital indicator
  - b) Livestock are not sold by weight
- 3) If livestock scale operators remain on the list of key employees would you object to GIPSA referring to the livestock scale operator as the “weigher” rather than the “weighmaster” in 201.56(c)?

GIPSA is also interested to hear comments on whether key employees may purchase livestock during a sale under specific circumstances, or for specific purposes, such as:

- 4) If a key employee would step down from the auctioneer’s booth or scale during a sale:
  - a) Could the key employee then bid on livestock for their own account from the bleachers with the other buyers as long as the employee provided no key services while doing so:

- i) Should this be limited to a specific species;
  - ii) Should their time spent bidding or serving in a key capacity be documented, and if so, how;
  - iii) Should a key employee be allowed to return to the auctioneer's booth or scale, to perform key employee duties, after bidding on livestock from the bleachers?
- 5) Should GIPSA allow a key employee to buy livestock for market support or to fill orders held by their employer, the market agency?
- 6) What is perceived to be the greatest impediment or barrier to effective competition at a market agency selling livestock on a commission basis?

GIPSA welcomes any comments addressing these issues and any other aspects of the general subject of permitting key employees to purchase livestock from consignments to a market agency.

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Susan B. Keith  
Acting Administrator  
Grain Inspection, Packers and Stockyards Administration

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