

**Pre-decisional 4-7-2017
(OFR Comments reflected)**

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN: 0580-AB25

Scope of Sections 202(a) and (b) of the Packers and Stockyards Act

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA

ACTION: Interim final rule; notice of delay of effective date.

SUMMARY: The United States Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is delaying the effective date of the rule published on December 20, 2016, for an additional six months to October 19, 2017, in response to a comment received from a national general farm organization that requested an extension of time and to allow time for further consideration by USDA. The effective date for this rule was originally February 21, 2017, and subsequently delayed to April 22, 2017, by a document published in the *Federal Register* on February 7, 2017. The interim final rule addresses the scope of sections 202(a) and (b) of the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act) in order to clarify that conduct or action may violate sections 202(a) and (b) of the P&S Act without adversely affecting, or having a likelihood of adversely affecting, competition.

DATES: The effective date for the interim final rule amending 9 CFR part 201, published at 81 FR 92566, December 20, 2016, delayed at 82 FR 9489, February 7, 2017, is further delayed until October 19, 2017.

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SUPPLEMENTARY INFORMATION: Consistent with the memorandum of January 20, 2017, to the heads of executive departments and agencies from the Assistant to the President and Chief of Staff entitled “Regulatory Freeze Pending Review,” on February 7, 2017, GIPSA extended the public comment period and delayed the effective date of the interim final rule entitled “Scope of sections 202(a) and (b) of the Packers and Stockyards Act” that was published in the *Federal Register* on December 20, 2016, 81 FR 92566. The comment period was extended at that time to March 24, 2017, and the effective date delayed to April 22, 2017.

Given the significant public interest in this rule, GIPSA has found that the initial delay of the effective date to April 22, 2017, will likely not provide sufficient time for USDA to adequately consider all comments received and make informed policy decisions regarding this rule. GIPSA is therefore further delaying the effective date of this rule an additional 180 days to October 19, 2017. In addition, GIPSA will publish a proposed rule that solicits public comments on the direction that USDA should take with respect to the rule. The public will have a 60-day comment period to specify whether USDA should (1) let the rule become effective, (2) suspend the rule indefinitely, (3) delay the effective date of the rule further, or (4) withdraw the rule.

As published, this interim final rule states the USDA’s long held interpretation that not all violations of the P&S Act require a showing of harm or likely harm to competition. Section 201.3(a) specifically provides that the scope of section 202(a) and (b) encompasses conduct or action that, depending on their nature and the circumstances, can be found to violate the P&S Act

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without a finding of harm or likely harm to competition. This interim final rule finalizes a proposed § 201.3(c) that GIPSA published on June 22, 2010, 75 FR 35338, with slight modifications in order to allow additional public comment on these provisions.

To the extent that 5 U.S.C. 553(b)(A) applies to this action, it is exempt from notice and comment rulemaking for good cause and for reasons cited above, GIPSA finds that notice and solicitation of comment regarding the extension of the effective date of the interim final rule are impracticable, unnecessary, or contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). The delay of the effective date until October 19, 2017, should give GIPSA sufficient time to receive and consider public comments and to take action on the disposition of the IFR. Delaying the effective date would also reduce confusion or uncertainty for the industry while GIPSA determines the appropriate final disposition of the IFR. GIPSA believes that affected parties need to be informed as soon as possible of the extension and its length.

Randall D. Jones
Acting Administrator
Grain Inspection, Packers and Stockyards Administration