



441 G St. N.W.  
Washington, DC 20548

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January 12, 2017

The Honorable Pat Roberts  
Chairman  
The Honorable Debbie Stabenow  
Ranking Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable K. Michael Conaway  
Chairman  
The Honorable Collin C. Peterson  
Ranking Member  
Committee on Agriculture  
House of Representatives

Subject: *Department of Agriculture, Grain Inspection, Packers and Stockyards Administration: Scope of Sections 202(a) and (b) of the Packers and Stockyards Act*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture, Grain Inspection, Packers and Stockyards Administration (GIPSA) entitled "Scope of Sections 202(a) and (b) of the Packers and Stockyards Act" (RIN: 0580-AB25). We received the rule on December 29, 2016. It was published in the *Federal Register* as an interim final rule; request for comments on December 20, 2016, and has an effective date of February 21, 2017. 81 Fed. Reg. 92,566.

The interim final rule clarifies that conduct or action may violate sections 202(a) and (b) of the Packers and Stockyards Act without adversely affecting, or having a likelihood of adversely affecting competition. This interim final rule also reiterates the Department of Agriculture's longstanding interpretation that not all violations of the Packers and Stockyards Act require a showing of harm or likely harm to competition.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This interim final rule was published in the *Federal Register* on December 20, 2016. 81 Fed. Reg. 92,566. It was received on December 29, 2016, and has an effective date of February 21, 2017. Therefore, the interim final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of GIPSA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. With the exception of the 60-day delay in effective date requirement, our review of the procedural steps taken indicates that GIPSA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Raymond D. Thomas II  
Supervisory Regulatory Analyst  
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF AGRICULTURE,  
GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION  
ENTITLED  
“SCOPE OF SECTIONS 202(A) AND (B) OF THE  
PACKERS AND STOCKYARDS ACT”  
(RIN: 0580-AB25)

(i) Cost-benefit analysis

The Grain Inspection, Packers and Stockyards Administration (GIPSA) stated that an initial increase in litigation costs is a likely result of this rule, as the industry and the courts are setting precedents for the interpretation of § 201.3 of the interim final rule. However, GIPSA also stated that the litigation costs and the number of lawsuits are expected to decrease after precedent setting decisions are established. GIPSA also believes §§ 201.210, 201.211, and 201.214 of the interim final rule, once published as final rules, will mitigate potential costs associated with § 201.3(a) by clarifying what conduct or action would violate § 202(a) and § 202(b) of the Packers and Stockyards Act (P&S Act). Finally, GIPSA stated that implementation of these regulations may lower costs to some livestock producers, swine production contract growers, and poultry growers should they bring legal action for an alleged violation of § 202(a) or § 202(b) of the P&S Act.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

GIPSA certified that this interim final rule is not expected to have a significant economic impact on a substantial number of small business entities. However, GIPSA acknowledged that individual businesses may have relevant data to supplement their analysis and encouraged small stakeholders to submit any relevant data during the comment period.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

GIPSA did not discuss the Act in the interim final rule.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On June 22, 2010, GIPSA published a proposed rule. 75 Fed. Reg. 35,338. GIPSA received over 61,000 comments which addressed the rule generally as well as specific provisions. GIPSA received comments from parties affected by the rule, including livestock producers and poultry dealers, trade associations representing production and processing, plant workers, and consumers. GIPSA responded to comments in the interim final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

GIPSA found that this interim final rule does not contain new or amended information collection requirements subject to the Act.

Statutory authorization for the rule

GIPSA stated that it promulgated this rule under 7 U.S.C. §§ 181-229c.

Executive Order No. 12,866 (Regulatory Planning and Review)

GIPSA determined this interim final rule was economically significant for purposes of the Order. This interim final rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

GIPSA did not discuss the Order in the interim final rule.