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# GIPSA WITHDRAWS FINAL RULE LEAVING SMALL FARMERS TO FEND FOR THEMSELVES

[Agriculture \(/full-blog/category/Agriculture\)](#)

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In 2016, after years of discussion and debate, the United States Department of Agriculture's (USDA) Grain Inspection, Packers & Stockyards Administration (GIPSA) issued a final rule that would "make it easier for small contract farmers...to sue meat-packing or processing companies that engage in anticompetitive practices."<sup>[i]</sup> In October 2017, however, the USDA withdrew the rule.<sup>[ii]</sup>

GIPSA is the USDA's "agency that facilitates the marketing of livestock, poultry, meat...and related agricultural products, and promotes fair and competitive trading practices for the overall benefit of consumers and American agriculture."<sup>[iii]</sup> The withdrawn rule would have helped small farmers sue the large companies they work for if they felt mistreated.<sup>[iv]</sup> More specifically, the rule would have "revised the current regulations implementing the [Packers and Stockyards] Act to state that a finding of harm or likely harm to competition was not needed to find a violation of...that Act."<sup>[v]</sup> Under the Obama Administration's rule, the high bar of the current rule would have been lowered so that harm to one farmer would have been sufficient to support a claim of anticompetitive practices.<sup>[vi]</sup>



Proponents of the withdrawal were fearful of increased litigation and harm to small farmers.[vii]

Commenters said that without the requirement to show harm to competition, the [interim final rule] IFR would embolden producers and growers to sue for any perceived slight by a packer or integrator. Fear of litigation would cause packers and integrators to vertically integrate further, increase their volume of captive supplies, and rely even more on those suppliers and growers they currently use. Therefore, these commenters suggested the IFR would result in new suppliers being shut out of markets.[viii]

Opponents of the withdrawal fear that it has given the industry giants the go-ahead to discriminate against small farmers since they must show harm to the industry, something much more difficult to do, instead of harm to only one farmer.[ix] The rule was intended to “level the playing field” between small farmers and the large companies for which they work.[x]

The Trump administration has faced lawsuits opposing other efforts to “undo Obama-era regulations;” however, a lawsuit over this rollback would probably be unsuccessful.[xi] The USDA underwent the notice and comment process when considering withdrawing the rule, and administrative agencies are given broad leeway regarding interpretations of federal laws.[xii]

While the Trump Administration’s interpretation would probably hold-up if challenged in court, small farmers will be left to fend for themselves against large industry players who may now feel emboldened to act unfairly toward them since such a high standard will still be required for a claim under the Packers and Stockyards Act.

[i] M. Scott Mahaskey, *5 Things Trump Did This Week While You Weren’t Looking*, Politico (Oct. 20, 2017, 2:18 PM), <https://www.politico.com/agenda/story/2017/10/20/trump-policy-obamacare-china-farmers-000563>.

[ii] *Id.*

[iii] *About GIPSA*, United States Dep’t of Agric.: Grain Inspection, Packers & Stockyards Admin. (last visited Nov. 4, 2017), <https://www.gipsa.usda.gov/about/about.aspx> [<https://perma.cc/D3XK-ZVZK>].

[iv] Deena Shanker, *Trump Chooses Big Meat Over Little Farmers*, Bloomberg (Oct. 25, 2017, 4:00 AM), <https://www.bloomberg.com/news/articles/2017-10-25/the-trump-administration-chooses-big-meat-withdraws-gipsa-rule> [<https://perma.cc/7FW2-Z7GJ>].

[v] 82 Fed. Reg. 48594.

[vi] Shanker, *supra* at note iv.

[vii] 82 Fed. Reg. 48594.

[viii] *Id.*

[ix] *Trump Administration Announces Withdraw of GIPSA Rules*, Ohio’s Country J. (Oct. 19, 2017), <http://ocj.com/2017/10/trump-administration-announces-withdraw-of-gipsa-rules/> [<https://perma.cc/GGS4-JMCJ>].

[x] *Id.*

[xi] Shanker, *supra* note iv.

[xii] *Id.*

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