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U.S. House of Representatives
Committee on Agriculture
Room 1301, Longworth House Office Building
Washington, DC 20515-6001

(202) 225-2171

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October 20, 2016

The Honorable Thomas J. Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Secretary Vilsack:

I write to you in regard to the three Grain Inspection, Packers and Stockyard Administration (GIPSA) rules that were recently submitted to the White House Office of Management and Budget for final review.

I have been concerned with various portions of these rules and their potential effect on the livestock and poultry industries since the rules' initial proposal more than six years ago. As you well know, my colleagues in Congress have shared in that concern and effectively blocked the implementation of the rules since that time. It is unfortunate that despite this clear and continued message from Congress, the Department is continuing to push for such controversial and potentially costly reforms, and has done so without keeping Congress apprised of its progress.

I do appreciate that you have considered excluding provisions—like the ban on packer-to-packer sales and the requirement to maintain written justifications for differential pricing—that would be particularly disruptive to current industry practice. However, every indication suggests that the remaining rules will largely resemble their predecessors.

Of particular concern is the measure regarding injury to competition. Widely perceived as the most controversial and potentially most detrimental to industry, this provision, which relieves plaintiffs from the burden of proving competitive injury, runs counter to judicial precedent established in eight different federal appellate courts and was never called for in the 2008 Farm Bill, nor any congressional directive since. The decision to issue such a regulation as an interim final rule—making it the de facto law of the land—without renewed opportunity for public comment beforehand is especially disconcerting.

I have grave concerns about both the scope and substance of these rules. To that end, I would ask you to withdraw all three rules and allow Congress to work with your successor on an approach that addresses industry concerns while taking into account the interests of all involved.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Michael Conaway". The signature is stylized and cursive, with a large, sweeping flourish at the end.

K. Michael Conaway