Congress of the United States
Washington, DC 20515

March 13, 2020

The Honorable Sonny Perdue
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, N.W.
Washington, DC 20250

Dear Secretary Perdue,

We appreciate the opportunity to comment and offer recommendations to improve the proposed Agricultural Marketing Service (AMS) rule regarding the undue and reasonable preferences provision of the Packers and Stockyards Act. We have a shared interest in protecting thousands of small livestock and poultry farmers in our states against the unreasonable practices of packers and poultry companies. We do not feel that the proposed rule adequately addresses those concerns.

The 2008 Farm Bill required the U.S. Department of Agriculture (USDA) to establish criteria to determine whether an undue or unreasonable preference or advantage has occurred in violation of the Packers and Stockyards Act. In January 2019, AMS published a proposed rule in an effort to establish such regulations. We are concerned that the proposed AMS rule does not adequately safeguard farmers and ranchers against unreasonable, retaliatory, and predatory practices within the industry.

Broadly, the rule falls short of specific unreasonable practices, instead laying out vague and imprecise provisions. Further, the rule appears to provide legal protection for packers and integrators who are able to justify a practice based on the need to save costs and reduce prices, or if their practices are deemed "customary" in the industry because they align with those of their competitors.

This approach is problematic because the farmer protections of the Packers and Stockyards Act have gone largely unenforced for decades. As a result, many inappropriate livestock and poultry industry practices have gone unchecked and become "customary" in the industry. This rule not only fails to address many of these abusive and unreasonable industry practices, but it actively establishes criteria insulating packers and poultry companies from scrutiny under this section of the Act.

Unless significantly revised, these criteria will ensure that producers' margins are slashed, and consolidation will continue, to the detriment of the nation's farmers, ranchers and rural communities. As you modify the proposed rule, we encourage you to also consider the following changes:

- Removal of provisions that insulate packers and poultry companies from the undue or unreasonable preference or advantage provisions of the Act on the basis that their

practices reduce their own costs, have business-related justifications or are considered customary in the industry.

- Protections against retaliatory practices that disadvantage certain farmers based on their membership in producer associations or their lawful communications with government officials and the public about their concerns regarding industry practices.
- Provide much-needed clarification on when a farmer must prove that an industry practice, which has harmed them individually, has also harmed competition in the sector more broadly. USDA has historically interpreted that such a demonstration of "harm to competition" under the Act is not necessary in all cases, but there has been confusion in the courts on that point. This confusion has greatly limited the ability of farmers to protect themselves against abusive industry practices. Restating the longstanding USDA interpretation on this point would be very helpful.

We look forward to working with you to improve this rule in an effort to protect the rights of America's independent livestock and poultry producers. Thank you for your consideration.

Sincerely,

Jon Tester
United States Senator

Charles E. Grassley
United States Senator

Marcy Kaptur
Member of Congress

Bernard Sanders
United States Senator

Cory A. Booker
United States Senator

Roy Wyden
United States Senator

Chellie Pingree
Member of Congress

Earl Blumenauer
Member of Congress

Marc Pocan
Member of Congress

Ro Khanna
Member of Congress