

# U.S. House of Representatives

## Committee on the Judiciary

Washington, DC 20515-6216  
One Hundred Sixteenth Congress

June 9, 2020

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

Dear Mr. Secretary:

As the Trump Administration responds to the coronavirus pandemic and implements Executive Order 13924's requirements for regulatory reform,<sup>1</sup> we urge you to revisit burdensome regulations that create barriers to entry and lessen competition in the nation's meat processing industry. Because of consolidation, the supply chain suffers when large meat processors slow or shut down. Reducing regulatory burdens will increase competition and strengthen a crucial industry at an important time.

The high cost of complying with meat processing laws has made it hard for smaller processors to compete and has led to significant consolidation in the industry.<sup>2</sup> Processors undergo either federal or state inspection for compliance with relevant standards.<sup>3</sup> Generally, only meat from federally inspected processors can be sold across state lines.<sup>4</sup> In these processing plants, inspectors from the United States Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) examine each animal.<sup>5</sup> Inspectors also "monitor operations, check sanitary conditions, examine ingredient levels and packaging, review records, verify food safety [Hazard Analysis and Critical Control Point (HACCP)] plans, and conduct statistical sampling and testing of products for pathogens and residues . . . ."<sup>6</sup> Although over half the states operate state inspection programs, those state programs must enforce requirements at least equal to relevant federal laws.<sup>7</sup> This means that federal standards functionally impose costs on smaller

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<sup>1</sup> Executive Order 13924, 85 Fed. Reg. 31353 (May 19, 2020).

<sup>2</sup> See Deena Shanker, *There Aren't Enough Slaughterhouses to Support the Farm-to-Table Economy*, BLOOMBERG (May 23, 2017).

<sup>3</sup> See *State Inspection Programs*, U.S. DEPARTMENT OF AGRICULTURE, <https://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/state-inspection-programs> (last visited May 29, 2020).

<sup>4</sup> *Id.*

<sup>5</sup> Renée Johnson, CONG. RESEARCH SERV., RS22600, *The Federal Food Safety System: A Primer* 6 (Dec. 16, 2016); *Inspection for Food Safety: The Basics*, U.S. DEPARTMENT OF AGRICULTURE, <https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/production-and-inspection/inspection-for-food-safety-the-basics> (last visited May 29, 2020).

<sup>6</sup> Renée Johnson, CONG. RESEARCH SERV., RS22600, *The Federal Food Safety System: A Primer* 6 (Dec. 16, 2016).

<sup>7</sup> *Id.*; *State Inspection Programs*, U.S. DEPARTMENT OF AGRICULTURE, <https://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/state-inspection-programs> (last visited May 29, 2020).

processors preparing meat for only *intrastate* sales.<sup>8</sup> Accordingly, some ranchers and livestock farmers that raise product for local consumption must still have meat processed consistent with costly requirements that apply to the largest processors.<sup>9</sup> Such large processors can better afford to bear regulatory costs and related enforcement risks that disproportionately affect smaller processors, which has led to significant consolidation.<sup>10</sup> Due to consolidation, ranchers and other livestock farmers must sometimes transport animals hundreds of miles for processing.<sup>11</sup>

The coronavirus hit large meat processors hard, creating a choke point that has made it more difficult for ranchers and other livestock farmers to get products to market. Coronavirus outbreaks have forced some of the largest processors to limit or temporarily close their operations.<sup>12</sup> In such a concentrated industry<sup>13</sup> with relatively few small processors, decreased processing capacity at the largest companies leaves ranchers and other livestock farmers with few alternatives for getting their meat processed.<sup>14</sup> Decreased processing capacity can increase their costs of transporting animals for lawful processing<sup>15</sup> and reduces revenues overall.<sup>16</sup> It can

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<sup>8</sup> See Baylen Linnekin & Tyler Lindholm, *To Stanch COVID-19 Meat Crisis, Let Small Farmers Sell Meat to Local Grocers*, REASON (May 9, 2020).

<sup>9</sup> See *id.*; Deena Shanker, *There Aren't Enough Slaughterhouses to Support the Farm-to-Table Economy*, BLOOMBERG (May 23, 2017).

<sup>10</sup> See Deena Shanker, *There Aren't Enough Slaughterhouses to Support the Farm-to-Table Economy*, BLOOMBERG (May 23, 2017); Deanna Nelson-Licking, *No excess room at small plants*, TRI-STATE LIVESTOCK NEWS (Apr. 27, 2020); Baylen Linnekin, *As major meat processors buckle under Covid-19 crisis, busy smaller competitors fight red tape*, THE COUNTER (May 7, 2020); see generally COUNCIL OF ECONOMIC ADVISORS, *The Growth Potential of Deregulation* 10-11 (Oct. 2, 2017), <https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/The%20Growth%20Potential%20of%20Deregulation.pdf>.

<sup>11</sup> See, e.g., Baylen Linnekin & Tyler Lindholm, *To Stanch COVID-19 Meat Crisis, Let Small Farmers Sell Meat to Local Grocers*, REASON (May 9, 2020); Johnathan Hettinger, *With beef backlogged and the market in flux, Montana cattle ranchers face tough choices*, MONTANA FREE PRESS (Apr. 28, 2020); Deena Shanker, *There Aren't Enough Slaughterhouses to Support the Farm-to-Table Economy*, BLOOMBERG (May 23, 2017); Beth Hoffman, *Small-Scale Slaughterhouses Aim To Put The 'Local' Back In Local Meat*, NATIONAL PUBLIC RADIO (June 4, 2012).

<sup>12</sup> See, e.g., Executive Order 13917, 85 Fed. Reg. 26313 § 1 (Apr. 28, 2020); Matthew C. Klein, *Meat Shortages Are Coming as Coronavirus Shuts Down Packing Plants*, BARRONS (April 28, 2020); Stephanie Sy, *Meat-processing plants remain source of concern for new COVID-19 outbreaks*, PBS NEWS HOUR (May 26, 2020).

<sup>13</sup> See, e.g., Matthew C. Klein, *Meat Shortages Are Coming as Coronavirus Shuts Down Packing Plants*, BARRONS (April 28, 2020).

<sup>14</sup> See Deanna Nelson-Licking, *No excess room at small plants*, TRI-STATE LIVESTOCK NEWS (Apr. 27, 2020); Baylen Linnekin & Tyler Lindholm, *To Stanch COVID-19 Meat Crisis, Let Small Farmers Sell Meat to Local Grocers*, REASON (May 9, 2020); Danielle Wiener-Bronner, *Meat plants are shutting down as workers get sick*, CNN BUSINESS (Apr. 8, 2020).

<sup>15</sup> See, e.g., Tom Polansek & P.J. Huffstutter, *Piglets aborted, chickens gassed as pandemic slams meat sector*, REUTERS (Apr. 27, 2020); see generally Deanna Nelson-Licking, *No excess room at small plants*, TRI-STATE LIVESTOCK NEWS (Apr. 27, 2020).

<sup>16</sup> Laura Reiley, *In one month, the meat industry's supply chain broke. Here's what you need to know.*, WASHINGTON POST (Apr. 28, 2020).

even lead to extreme measures, such as euthanizing livestock.<sup>17</sup> Large meat processor closures have affected livestock producers in North Dakota,<sup>18</sup> Ohio,<sup>19</sup> and Colorado.<sup>20</sup>

As the Trump Administration works to support the meat processing industry<sup>21</sup> and begins to implement Executive Order 13924's goal of economic recovery, we encourage you to consider the following areas for regulatory and programmatic reform:

#### *Hazard Analysis and Critical Control Point (HACCP) Plans*

USDA requires meat processors to develop, validate, update, maintain records about, and receive approval for their HACCP plans that address food safety hazards.<sup>22</sup> Processors must reassess and sometimes modify HACCP plans, including when production volumes change.<sup>23</sup> USDA should consider how to give smaller meat processors more flexibility to comply with HACCP regulations, including during rapid production changes.

#### *Meat Label Submission and Approval Process*

USDA requires and regulates labelling by meat processors.<sup>24</sup> Certain labels must be submitted for USDA approval.<sup>25</sup> This process can be confusing and costly. USDA should consider ways to give clearer guidance to new meat processors, and to existing meat processors that are expanding their operations and products. USDA should also consider ways to streamline its internal approval processes for labels.

#### *Cooperative Interstate Shipment (CIS) Program*

In general, meat processors operating under a state meat inspection program can sell meat only within their state.<sup>26</sup> USDA's Cooperative Interstate Shipment (CIS) program creates an exception.<sup>27</sup> If a state participates in CIS, its eligible state-inspected meat processors can sell

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<sup>17</sup> Sophie Kevany, *Millions of farm animals culled as US food supply chain chokes up*, THE GUARDIAN (Apr. 29, 2020); Tom Polansek & P.J. Huffstutter, *Piglets aborted, chickens gassed as pandemic slams meat sector*, REUTERS (Apr. 27, 2020).

<sup>18</sup> See Deanna Nelson-Licking, *No excess room at small plants*, TRI-STATE LIVESTOCK NEWS (Apr. 27, 2020).

<sup>19</sup> Ted Hart, *With meat processing plants closing, Ohio farmers left with few options*, NBC4 WCMH-TV (May 4, 2020); Tom Bosco, *Try smaller, local butcher and processors during meat shortages, experts say*, ABC6 (May 4, 2020).

<sup>20</sup> Judith Kohler, *Coronavirus-linked problems in meat supply chain could mean shortages, trouble for ranchers*, THE DENVER POST (May 10, 2020).

<sup>21</sup> Executive Order 13917, 85 Fed. Reg. 26313 (Apr. 28, 2020).

<sup>22</sup> See 9 C.F.R. Part 417 (outlining requirements for Hazard Analysis and Critical Control Point Systems); Renée Johnson, CONG. RESEARCH SERV., RS22600, *The Federal Food Safety System: A Primer* 6 n.15 (Dec. 16, 2016).

<sup>23</sup> 9 C.F.R. § 417.4(a)(3)(i).

<sup>24</sup> Renée Johnson, CONG. RESEARCH SERV., RS22600, *The Federal Food Safety System: A Primer* 5 (Dec. 16, 2016).

<sup>25</sup> 9 C.F.R. § 412.1(a).

<sup>26</sup> *Cooperative Interstate Shipment Program: Backgrounder*, U.S. DEPARTMENT OF AGRICULTURE, <https://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/state-inspection-programs/cis/backgrounder> (last visited May 29, 2020).

<sup>27</sup> *Id.*

products outside their state as well.<sup>28</sup> Only seven states participate in the CIS program currently.<sup>29</sup> If more states participated, additional smaller meat processors would be able to compete in larger markets. More participation in the program by smaller meat processors would diversify and strengthen the supply chain. USDA should consider ways to reduce regulatory burdens associated with the CIS program and should encourage more states and small processors to participate.

*USDA's Food Safety and Inspection Service (FSIS) Overtime Requirements*

Meat processing entails rigorous inspection.<sup>30</sup> In federally inspected plants, USDA provides and pays for inspectors during normal working hours.<sup>31</sup> But meat processors must pay for overtime.<sup>32</sup> This makes it more costly for processors to adjust operations to process additional meat and satisfy higher demand. USDA should consider how to increase flexibility and lessen expense for smaller processors that need inspectors beyond normal hours.

Appropriate regulatory reform in these and other areas<sup>33</sup> will lower barriers to entry and expansion that smaller meat processors face. Such reform will enhance competition far more than denouncing consolidation—and the large processors—in an industry that federal law has shaped for decades. Taking action now will benefit smaller processors, help the ranchers and livestock farmers they serve, and strengthen a crucial part of the nation's food supply chain.

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<sup>28</sup> *Id.*

<sup>29</sup> *CIS Program: Currently Participating States*, U.S. DEPARTMENT OF AGRICULTURE, <https://www.fsis.usda.gov/wps/portal/food/inspection/state-inspection-programs/cis/states-participating> (last visited May 29, 2020).

<sup>30</sup> See Renée Johnson, CONG. RESEARCH SERV., RS22600, *The Federal Food Safety System: A Primer* 6 (Dec. 16, 2016).

<sup>31</sup> Baylen Linnekin, *As major meat processors buckle under Covid-19 crisis, busy smaller competitors fight red tape*, THE COUNTER (May 7, 2020).

<sup>32</sup> *Id.*; see also 9 C.F.R. § 307.5(a).

<sup>33</sup> In addition to these four areas, the federal government should also learn from and promote the efforts of states working nimbly to respond to the pandemic and strengthen the supply chain long-term. States have shown that they can develop innovative policies that reduce burdens on smaller processors and benefit ranchers and livestock producers. For example, one state recently adopted a law allowing consumers to directly purchase a “herd share” instead of a share in an individual animal. This helps ranchers and farmers expand direct-to-consumer meat sales. See Charles Wallace, *New Wyoming law to allow ranchers to sell meat directly*, WESTERN LIVESTOCK JOURNAL (Apr. 17, 2020).

The Honorable Sonny Perdue

June 9, 2020

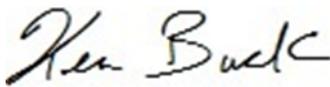
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We write to request a briefing on these issues, and on how Congress can assist you with appropriate regulatory and programmatic reforms as the nation works toward economic recovery. Thank you for your attention to this matter.

Sincerely,



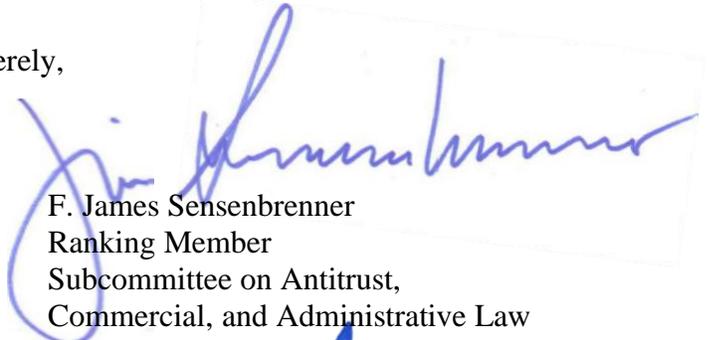
Jim Jordan  
Ranking Member  
Committee on the Judiciary



Ken Buck  
Subcommittee on Antitrust,  
Commercial, and Administrative Law



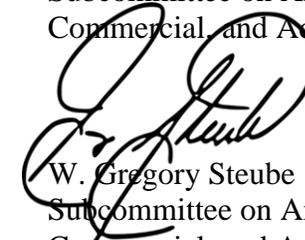
Kelly Armstrong  
Subcommittee on Antitrust,  
Commercial, and Administrative Law



F. James Sensenbrenner  
Ranking Member  
Subcommittee on Antitrust,  
Commercial, and Administrative Law



Matt Gaetz  
Subcommittee on Antitrust,  
Commercial, and Administrative Law



W. Gregory Steube  
Subcommittee on Antitrust,  
Commercial, and Administrative Law

cc: The Honorable Jerrold L. Nadler, Chairman, Committee on the Judiciary

The Honorable David N. Cicilline, Chairman, Subcommittee on Antitrust, Commercial, and Administrative Law

The Honorable Mindy M. Brashears, United States Department of Agriculture

The Honorable William P. Barr, United States Department of Justice

The Honorable Makan Delrahim, United States Department of Justice

The Honorable Paul J. Ray, Office of Information and Regulatory Affairs

Mr. Lawrence A. Kudlow, National Economic Council