Thank you for providing me the opportunity to testify today regarding new Grain Inspection, Packers and Stockyards Administration (GIPSA) rules, two which have been proposed and one that is an interim final rule, which were initiated during the final few months of the Obama Administration. These are the same rules that a number of past Appropriation bills specifically prohibited funding for implementation.

To ensure that these rules are not implemented, it is critical for the beef, pork, and poultry industries that language defunding these rules, once again, be included in the FY 2017 and FY 2018 Appropriation bills.

These new GIPSA rules present a myriad of problems that will only negatively affect producers. The agency itself even concedes that the rules will result in substantial litigation against the livestock and poultry industry. This helps no one.

In regards to the rule that is interim final, known as "Competitive Injury", the agency is trying to do through regulation what it has failed to achieve in the courts. This particular rule is simply an Obama Administration end-run to overturn the decisions of eight different U.S. Circuit Court of Appeals. Each has ruled that there must be injury to competition to violate Sections 202(a) or (b) of the Packers

and Stockyards Act. This rule change would open the floodgates for lawsuits on a massive scale.

Mr. Chairman, the other two proposed rules essentially remove any incentive to produce the products consumers prefer. Cattlemen, for example, have responded to consumer demands by finding innovative ways to develop and market premium quality and branded products. These alternative marketing arrangements have allowed cattlemen to get paid for the value they add. Without the contracted supply of cattle that meet the requirements of such programs, they will be severely reduced in size and scope if not abolished. This could have a huge impact on the choices our consumers make. Losing or limiting consumer-demanded product means loss of customers, which means a loss to producers. Essentially, it would destroy the value-added market.

The rules would similarly constrict incentives in chicken production. Most chicken production contracts are structured to reward the best-performing growers and to incentivize efficient, modern production and husbandry methods. GIPSA's proposal would drastically restrict chicken companies' ability to reward their best growers, stifle innovation, expose chicken processors to significant litigation risk and uncertainty, and undermine the global competitiveness of the U.S. chicken industry. In short, the cost to the chicken industry would be $1.37 billion during the first five years of implementation.

I appreciate the work the Appropriations Committee has done in the past to prohibit implementation of these rules, and I am so grateful for your willingness to be helpful again. As the Chairman of the House Agriculture's Livestock and Foreign Agriculture Subcommittee, I respectfully encourage the Committee to take every available opportunity to defund implementation of these rules.

Agriculture Appropriations Member Day Hearing
Rep. Rouzer Testimony on Cole Bishop
March 9th at 2pm

Chairman Aderholt and Ranking Member Bishop, thank you for allowing me to speak before the subcommittee in support of the Cole-Bishop Amendment to the FY2017 House Agriculture Appropriations Bill (Section 761). This amendment passed the full Appropriations Committee with bipartisan support last year. The amendment is vital because it clarifies the predicate date under FDA's deeming regulation and even goes further than FDA's regulation by requiring non-self-service, new print media advertising restrictions, additional labeling, and battery safety standards for vapor products.

The Family Smoking Prevention and Tobacco Control Act of 2009 immediately granted FDA the ability to regulate cigarettes, smokeless, and roll-your-own tobacco products. The Act also provided FDA the ability to deem other tobacco products to be under its authority. In May 2016, FDA finalized the deeming rule and extended its regulatory authority to include cigars, vapor products, and other tobacco products. The final regulation took effect August 8, 2016.

While there were many pieces of the final deeming rule that I support, there was one provision that clearly needs to be changed and that is the predicate date. This date was set in the Tobacco Control Act as February 15, 2007. There is no magic to that date – it happens to be the date the bill was introduced in the 110th Congress. However, that date is important because it determines which regulatory pathway a tobacco product can come to market.

I was a proud cosponsor of Congressman Cole's stand-alone bill to change the predicate date in the last Congress. In fact, there were 76 other cosponsors of his bill. The Cole-Bishop amendment updates the February 15, 2007 predicate date for newly deemed tobacco products. It makes no sense that the current predicate date would apply to products that did not exist in the market in any meaningful way and that FDA began regulating in 2016. Without a change to the

2007 predicate date, FDA's regulation will require all vapor product manufacturers to submit costly and time-consuming pre-market tobacco applications to obtain FDA's permission to remain on the market. FDA itself predicts that these burdens will force many e-vapor products to exit the market.[1]

Without changing the predicate date, the reality is, vapor products will have a higher regulatory burden to get to the marketplace than a cigarette. This amendment does nothing to cut against FDA's full authority to regulate these products, and it builds on what FDA has already done in its final deeming regulation and accelerates action on additional consumer safety and marketing issues while modernizing the predicate date to promote a regulatory framework where harm reduction and innovation have a chance to succeed.

On behalf of many other members, I thank the subcommittee for the inclusion of the Cole-Bishop amendment and urge your leadership to ensure its enactment.

[1] FDA, *Final Regulatory Impact Analysis, Final Regulatory Flexibility Analysis, Unfunded Mandates Reform Act Analysis*, "Deeming Tobacco Products to be Subject to the Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations Restricting the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Product Packages and Advertisements" (May 2016) (Regulatory Impact Analysis) at 57, 79, 94.