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December 9, 2003

**Via HAND DELIVERY**

Docket No. 03-080-1  
Regulatory Analysis and Development  
PPD  
APHIS  
Station 3C71  
4700 River Road Unit 118  
Riverdale, MD 20737-1238

Re: **Docket No. 03-080-1, Bovine Spongiform Encephalopathy; Minimal Risk Regions and Importation of Commodities.**

Gentlemen:

Enclosed is an original and four copies of the Comments of Willows Farm Company on the Proposed Rules in Docket No. 03-080-1.

Sincerely,



Betty Jo Christian  
Counsel for Willows Farm  
Company

RECEIVED

**DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE**

**DOCKET NO. 03-080-1**

**BOVINE SPONGIFORM ENCEPHALOPATHY;  
MINIMAL RISK REGIONS AND  
IMPORTATION OF COMMODITIES**

**COMMENTS OF WILLOWS FARM COMPANY**

The proposed rules establishing conditions under which cattle under 30 months of age may be imported from Canada for immediate slaughter or for feeding are clearly warranted and should be adopted.<sup>1</sup> However, Willows Farm Company ("WFC") urges the Department to adopt rules permitting one additional category of live cattle to enter the United States from Canada -- namely, registered cattle that were born in the United States and taken into Canada subsequent to implementation of the Canadian ban on feed containing ruminant proteins, and their direct progeny. These are U.S. cattle -- not Canadian cattle. There is no risk whatsoever that their return to the United States could lead to the introduction of BSE, and thus there is no scientific basis for their continued exclusion.

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<sup>1</sup> We recognize that the proposed rules would apply to any country found by APHIS to be a BSE minimal risk region, and the additional rules being proposed by WFC would similarly apply to any BSE minimal risk region. However, because the immediate impact of the rules would be limited to Canada -- and WFC's interests are focused on Canada -- these comments will generally refer to "Canada" rather than the more comprehensive designation.

### Interest of Willows Farm Company

WFC is a Maryland corporation engaged in the breeding and marketing of registered Limousin and Red Angus seedstock at farms located in Frederick County and Carroll County, Maryland. Its address is P.O. Box 1140, Union Bridge, MD 21791.

In the fall of 2002, WFC purchased a number of registered Red Angus cattle from breeders in South Dakota. Ordinarily all of these cattle would have been brought immediately to one of WFC's farms in Maryland. However, at that time Maryland was suffering a severe drought and WFC's own farms did not have sufficient grass to accommodate all of the newly-acquired cattle immediately. Accordingly, it sought temporary grazing rights in regions unaffected by the drought. It eventually was able to make arrangements for temporary grazing on land located near East End, Saskatchewan, approximately 35 miles north of the Montana border. WFC thus brought some of its newly-purchased Red Angus to Maryland and sent the remainder to Saskatchewan for grazing, with the intent of bringing those cattle to Maryland as soon as sufficient grass was available there.

The drought in Maryland has long since ended and WFC has, in addition, acquired additional acreage, so that it could readily accommodate all of the cattle that it purchased in South Dakota. However, before the cattle that had been sent to Canada could be brought back, the BSE case in Canada was discovered and the border closed to all live cattle. WFC's' cattle -- which were born and raised in South Dakota and thus are "U.S. cattle," and not Canadian cattle at all -- remain trapped in Canada, unable to return to the United States.

**THE PROPOSED RULES SHOULD BE AMENDED  
TO PERMIT THE RE-IMPORT OF U.S. - BORN CATTLE  
AND THEIR PROGENY UNDER PRESCRIBED CONDITIONS.**

It should be emphasized at the outset that this proposal is for a very narrow expansion of the right to bring live cattle from Canada to the United States. First, it is limited to cattle that were born in the United States and their direct progeny. Second, it is limited to cattle that were not taken to Canada until after the Canadian feed ban went into effect. (Indeed, the proposed rules would require that the animal's entry into Canada be a full year after the effective date of the feed ban.) Third, it is limited to registered cattle, to insure that the identity of the animal as one born in the United States can be readily verified.<sup>2</sup> With these limitations, and with the safeguards embodied in the proposed rules (attached to these comments), there is no realistic possibility that the import of these U.S. - born cattle and their direct progeny could pose any risk of introducing BSE into the United States.

1. **The Re-Import of U.S. Born Registered Cattle should be Authorized under Appropriate Conditions.**

A U.S. - born animal, at the time it was taken into Canada (or another minimum risk region) plainly did not have BSE. As APHIS pointed out in its Notice of Proposed Rulemaking {"NPR"}: "BSE \* \* \* is not known to exist in the United States." *Federal Register*, Vol. 68, No. 213, at p. 62386. Thus, unless there is some reason for concern that a U.S. - born bovine may have contracted BSE while in Canada, there is no reason not to permit its return.

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<sup>2</sup> From a scientific standpoint, there is no reason to prohibit the re-import of commercial (or non-registered) U.S. - born cattle and their progeny as well. However, because verification of a particular animal's identity is simplified by registration, this proposal is limited to registered animals.

We respectfully submit that, as long as the animal's entry into Canada occurred after the effective date of the ban on feeding mammalian protein to ruminants (which is "the same as the feed ban in place in the United States" (NPR at § 2389)), and a Canadian government veterinary official certifies that the animal is not known to have been fed such products, there is no realistic possibility that the U.S. - born animal could have contracted BSE while in Canada.

The Proposed Rules, attached hereto, are designed to insure that no animal that presents a risk of BSE will be allowed to enter the United States under these rules.

Proposed Rules (f)(1), (1), (2), (6)(i) and (6)(ii) are designed to insure that the identity of the animal as one born in the United States can be verified. Rule 1 requires that the animal must have been born in the United States and have been registered with a U.S. - based purebred association, while Rule 2 requires that the inside of one ear must be tattooed with the breed registration number. Rules 6(i) - (ii) require that the animal be accompanied by its registration certificate, and a sworn statement from the original U.S. breeder as shown on the registration certificate, identifying the state and the county or parish in which the animal was born. By matching the ear tattoo to the number on the registration certificate, and linking the data regarding the animal's birth to the registration certificate, it will be possible to verify with certainty that the animal to be imported was in fact born in the United States.

Proposed Rules (f)(3), (4) and (6)(iii) are designed to insure that the animal did not enter the affected region until a ban on cattle feed containing ruminant-based products was in effect. Indeed, by requiring that the animal must not have entered the region until at least one year after the feed ban went into effect, the proposed rules would insure that the animal did not enter the region until long after it can reasonably be presumed that all existing feed stocks which

might have contained ruminant-based protein had been consumed or destroyed. This is an added safeguard to insure that there is no realistic possibility that the animal ever consumed prohibited feed.

Beyond this, the very fact that the proposed rules are limited to registered cattle provides additional assurance that no banned feed products have been given to the animal. Registered cattle are typically quite expensive, bringing a far higher price than commercial cattle of the same breed. They are given a high level of care, most commonly on purebred stock farms, and their feed is carefully selected and monitored. It is inconceivable that anyone would buy such an animal and then (either intentionally or accidentally) give it a feed that has been banned as unsafe for cattle.

Proposed Rule (f)(6)(iii) is designed to establish with certainty the date on which the animal entered the region. The permit issued by the Customs Service of the affected region, together with the other documents submitted to the Customs Service at the time of entry, will show the exact date on which the animal entered the region, thus insuring that it was not present in the region during a period in which it might have consumed ruminant-based feed.

Proposed Rule (f)(6)(iv) requires an official veterinary certificate, similar to that required by APHIS for bovine imported for feeding. Before issuing this certificate, the veterinary official would be free to conduct whatever investigation he regarded as necessary to satisfy himself that the animal had never been fed ruminant protein. This might include, for example, a physical inspection of the facilities where the animal has been kept and an interview with the person that has served as the animal's principal caretaker while it has been in the region. If an animal has been in more than one location or has had more than one caretaker, the official would be free to conduct additional inspections and interviews. In short, unless the official is

satisfied that this condition has been met, the animal's return to the United States would not be permitted.

Finally, Proposed Rule (f)(7) requires that the animal be imported only through the same ports of entry as prescribed for other classes of live cattle by APHIS.

It should also be noted that, since this proposal is limited to registered cattle, USDA would be in a position to conduct any follow-up with respect to such animals after their return to the United States that it may deem appropriate. The name and address of the current owner of the animal will always be available in the registry of the breed association.

We submit that, with these safeguards, there is no BSE risk associated with the return of U.S. - born cattle to the United States, and the proposed rules should be amended accordingly.

2. **The Import of the Direct Progeny of U.S. - Born Registered Female Cattle should also be Authorized under Appropriate Conditions.**

Given the fact that the Canadian border has been closed to live cattle for over six months, it must be assumed that many of the female U.S. - born cattle that were in Canada on the date of the border closing have now calved or will do so before these rules are implemented. We respectfully submit that there is also no realistic BSE risk associated with the import of the direct progeny of these U.S. - born female cattle, and that their import should be authorized under similar requirements. If these U.S. - born females had been brought back to the United States by early May 2002 -- just before the closing of the Canadian border -- these progeny would have been born in the United States and there would have been no issue at all with respect to their presence in this country. The mere fact that their mothers were forced to remain in Canada because of the border closing does not result in any increased BSE risk for the progeny.

Proposed Rules (g)(1) through (6) would impose the same stringent requirements with respect to the direct progeny of U.S. - born female cattle as are required for the U.S. - born cattle themselves. Proposed Rules (g)(1) and (5)(i) require that the animal's dam must meet all the requirements necessary for the dam's own re-import to the United States. Thus the only animals that would be eligible for import would be those whose mothers are themselves eligible for re-import into the United States. Paragraphs (g)(2), (3) and 5(ii) impose the same requirements with respect to registration and ear tattoos for the progeny as are required of U.S. - born cattle under Paragraphs (f)(1), (2), and (6)(i). Since the registration certificate required by proposed rule (g)(5)(ii) will show the name and registration number of the animal's dam, the combination of these requirements will insure that the animal's status as the direct progeny of a U.S. - born female can be verified.

Paragraphs (g) (4) and (5)(iii) establish the same requirements with respect to feed and official veterinary certification as are required with respect to U.S. - born cattle, and the veterinary official would be entitled to conduct the same sort of investigations and interviews in reaching his determination. And finally, under paragraph (g)(6), the same port of entry requirements as are proposed with respect to U.S. - born cattle would be imposed.

We respectfully submit that these rules provide sufficient safeguards to insure that there is no BSE risk associated with the import of the direct progeny of U.S. - born female registered cattle, and the proposed rules accordingly should be adopted.

Finally, in the event that USDA believes that more detailed scrutiny is required with respect to the import of the progeny of U.S. - born females, in the alternative we urge that rules be adopted to provide for the filing of individual applications with respect to such progeny. Such rules might require, for example, in addition to the information specified in the Proposed

Rules, information as to the date and place of birth of the animal in Canada, the address of every location at which it has been kept, and the name and address of the person primarily responsible for caring for the animal at each location. It might also require a comprehensive list (including brand names) of all feeds that have been given to the animal, and a CFIA certification that no prohibited product is contained in any of the feeds listed. This information regarding feed would be readily available with respect to registered cattle, whose feed is normally controlled and monitored. The review process associated with such individual applications would eliminate any conceivable concern that the import of a U.S. - born female bovine's direct progeny could pose any risk of introducing BSE into the United States.

**AUTHORIZING THE IMPORT OF U.S. - BORN  
CATTLE AND THEIR PROGENY WILL HAVE A  
POSITIVE ECONOMIC IMPACT ON U.S. BREEDERS.**

Prior to May 2002, U.S. - born cattle had for years moved freely between the United States and Canada. The border was treated as virtually non-existent, and U.S. breeders routinely sold cattle to Canadian buyers and sent their own cattle to Canada for grazing, showing or breeding, bringing them back to the United States whenever it made business sense to do so.

As a practical matter, the sale of U.S. - born registered cattle to Canadian buyers has essentially dried up since the border closing. While there is no prohibition against taking an animal from the United States to Canada, the fact that neither it nor its direct progeny can subsequently be sold by the Canadian buyer to a U.S. breeder has had a massive chilling effect. The result has been that U.S. breeders of registered seedstock -- who previously sold substantial numbers of heifers and young bulls to Canadian buyers -- have seen those sales disappear.

In addition, even the ability to engage in normal marketing activities with respect to potential Canadian buyers has been thwarted. Breeders of registered seedstock, in particular, used the presence of their prize animals in Canada as a marketing tool. By participating in major cattle shows, such as the Agribition held each January in Regina, Saskatchewan, or the show held in conjunction with the Calgary Stampede each July, U.S. breeders were able to show their registered bulls and females to a wide range of potential Canadian buyers, thus greatly enhancing the likelihood that such buyers would choose to purchase calves, embryos or semen from the U.S. breeder. Similarly, by placing one of their best bulls "at stud" in Canada for a period of time, U.S. breeders could make that bull much more attractive to potential Canadian breeders.

Beyond these marketing activities, many U.S. breeders have also regularly sent animals to Canada for grazing from time to time, depending on the availability of grass in particular regions. This not only enabled U.S. breeders to expand their herds -- or avoid a compelled herd reduction in times of drought -- but also to take advantage of lower grazing fees that were often available in Canada.

All of these activities have necessarily come to an end as a result of the border closing for one simple reason: If a U.S. breeder sends one of his U.S. - born animals to Canada, he cannot bring the animal home again. Thus the U.S. breeders are deprived of their normal access to the Canadian market, and both U.S. and Canadian breeders suffer as a result.

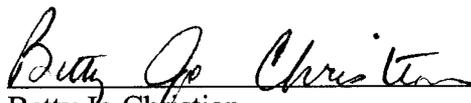
While we are not in a position to quantify the economic impact in dollars and cents, it is apparent that adoption of the proposed rules authorizing the re-import of U.S. - born cattle and their direct progeny will have a positive economic impact on the breeders of registered cattle in the United States.

**AUTHORIZING THE IMPORT OF U.S. - BORN  
REGISTERED CATTLE AND THEIR PROGENY  
WILL BENEFIT SMALL BUSINESS.**

The vast majority of breeders of registered cattle are small businesses. For example, the average breeder in the American Angus Association registers only 14 head annually. In 2002, 78% of the members of the North American Limousin Foundation registered less than ten (10) head. The average member of the Red Angus Association of America owns 31 head; less than 16% own as many as 50 head and only 7% have 100 head or more.

The ability of these small businesses to conduct business with prior and potential customers in Canada will be greatly enhanced if the proposed rules, allowing the return of U.S. - born cattle and their direct progeny to the United States, is adopted. By facilitating the resumption of normal business relations between registered cattle breeders in the United States and their Canadian customers, the proposed rules will yield significant benefits to small businesses.

Respectfully submitted,



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## Proposed Rules

(f) Bovine Born in the United States. Bovine born in the United States which are presently located in a region listed in § 94.18 (c)(3) of this subchapter may be re-imported under the following conditions:

(1) The bovine must have been born in the United States and must have been duly registered by a U.S. breeder in the breed registry of a purebred association headquartered in the United States;

(2) The inside of one ear on the animal must be permanently and legibly tattooed with the registration number assigned to that animal by the purebred breed association;

(3) The U.S. - born bovine must have entered a region listed in § 94.18 (c)(3) of this subchapter no earlier than one year subsequent to the date on which the region placed in effect the ban on the feeding of ruminant protein to ruminants required by § 94.0 (i)(iii);

(4) The inside of one ear on the animal must be implanted with a metal ear tag bearing the identification number assigned to the animal by a U.S. veterinarian prior to its entry into a region listed in § 94.18(c)(3);

(5) The U.S. - born bovine must not have been known to have been fed ruminant protein, other than milk protein, during its lifetime.

(6) The U.S. - born bovine must be accompanied by:

(i) A copy of the registration certificate issued by the breed registry of a U.S. - based breed registry association;

(ii) An affidavit of the original U.S. breeder, as shown on the registration certificate, stating the state and the county or parish in which the animal was born;

(iii) A copy of the permit issued by the Customs Service of the region listed in § 94.18(a)(3) showing the port of entry and the date on which the U.S. - born bovine entered such region, together with the official documents submitted to such Customs Service at the time of entry showing the U.S. veterinary identification number of each animal entering such region on that date;

(iv) A certificate issued in accordance with § 93.405 (a) of this subchapter that states, in addition to those statements required by § 98.405 (a), that the conditions of paragraph (f)(3) and (f)(5) of this section have been met; and

(7) The bovine must be imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f).

(g) Direct Progeny of Female Bovine Born in the United States. A bovine from a region listed in § 94.18(a)(3) of this subchapter which is a direct progeny of a female bovine that was born in the United States may be imported under the following conditions:

(1) The bovine's dam meets all of the requirements of paragraphs (f)(1) through (f)(5) of this section;

(2) The bovine must have been duly registered by a U.S. breeder in the breed registry of a purebred association headquartered in the United States;

(3) The inside of one ear of the animal must be permanently and legibly tattooed with the registration number assigned to that animal by the purebred breed association;

(4) The bovine must not have been known to have been fed ruminant protein, other than milk protein, during its lifetime;

(5) The bovine must be accompanied by:

(i) A copy of the documents described in paragraph (f)(6)(i) through (f)(6)(iii) with respect to the animal's dam;

(ii) A copy of the registration certificate issued by the breed registry of a U.S. - based breed registration association with respect to the animal to be imported, showing the name and registration number of the animal's dam; and

(iii) A certificate issued in accordance with § 93.405(a) of this subchapter that states, in addition to the statements required by § 94.405(a), that the conditions of paragraphs (f)(1), (f)(3) and (g)(4) have been met; and

(6) The bovine must be imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f).