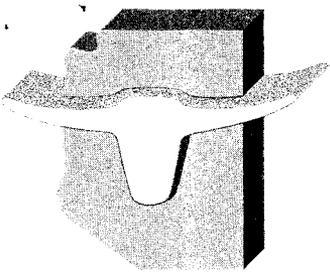


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ACFA

ARIZONA CATTLE FEEDERS' ASSOCIATION

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PHOENIX, ARIZONA 85008 • (602) 273-7414

March 18, 2004

Docket No. 03-0801
Regulatory Analysis and Development PPD APHIS
Station 3C71
4700 River Road Unit 118
Riverdale, MD 20737-1238

Re: Comments on Docket No. 03-080-01 Federal Register (68 FR 62386-62405)

Dear APHIS:

The ACFA submits the following comments on the United States Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) reopening of the proposed rule amending regulations regarding the importation of animals and animal products to recognize, and add Canada to, a category of regions that present a minimal risk of introducing *bovine spongiform encephalopathy* (BSE) into the United States via live ruminants and ruminant products.

However, since Federal Register notice is unclear and self conflicting, even with communications from the USDA APHIS, regarding whether the proposal addresses beef or live animals, or beef and live animals, we are requesting you limit the final rule to the importation of beef and beef products only and abide by the wording of the *Federal Register/Vol. 69, No. 45/Monday, March 8, 2004/Proposed Rules 10635*, which states, ***"We invite comment from the public regarding this change to the provisions we proposed in November 2003 regarding the importation of beef. With regard to the importation of live animals from BSE minimal-risk regions, APHIS is currently evaluating the appropriate approach regarding such animals and intends to address that issue in a supplemental rulemaking proposal in the Federal Register."***

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March 18, 2004

Page Two

Docket No. 03-080-1

Because of the single case of BSE in Canada announced on May 20, 2003, Canada was added to the list of regions which BSE is known to exist, listed in § 94.18(a)(1), on Thursday, May 29, 2003 via Docket No. 03-058-1, entitled Change in Disease Status of Canada Because of BSE. This amendment to § 94.18(a)(1) was made effective retroactively to May 20, 2003, and effectively prohibited the importation of ruminants that have been in Canada and the importation of meat, meat products, and certain other products and byproducts of ruminants that have been in Canada.

The ACFA applauds USDA for their swift action in response to that incident. In regards to this proposed action, ACFA feels the decision to designate Canada as a BSE minimal-risk region is inconsistent with the World Trade Organization's (WTO) current International Office of Epizootics (OIE) guidelines. Until such time as the OIE adopts changes to reflect the best science and risk assessment information available, the U.S. is premature in adopting rules that are in conflict with the long held OIE guidelines.

In addition to this OIE discrepancy, which we understand is being amended, there are a number of other compliance and accountability issues related to Canadian regulations on BSE. The investigation identified issues related to feed mill compliance in Canada. These issues are still outstanding and they provide a potential avenue of introducing BSE from Canadian live animal imports. Until such time as all of these compliance and other BSE harmonization issues are resolved with Canada, our increased regulatory programs remain vulnerable to challenge if we accept animals from Canada produced under different regulatory regimes.

March 18, 2004

Page Three

Docket No. 03-080-1

Canadian Investigation

After the first incident of BSE in a Canadian cow a team consisting of Prof. U. Kihm (Switzerland), Prof. W. Hueston (USA) and Dr. D. Heim (Switzerland) convened in Ottawa on June 7-9, 2003. This team reviewed the epidemiological investigation, the actions taken to date, and the scope of options and measures being considered to adjust domestic policies to address the Canadian BSE situation. The team observed a number of items needing consideration.

First of all, they were impressed by the comprehensive scope and level of analysis of the investigation to date. However, the team established epidemiological evidence that supported the probability that the expression of BSE in the case animal was associated with exposure to infected material through the feeding system. They went on to state, "Neither can past exposure of other cattle to contaminated feed be discounted. The possibility that products were derived from the positive cow, **and the possibility that other infected cattle in the late stages of incubation are present in Canadian herds,** leads to the conclusion that the adoption of additional measures to reduce or eliminate future exposure are warranted." Additionally the team found,"It can reasonably be assumed based on the collective experience of other countries that adjustments must be undertaken promptly to address the possibility **that other animals may have been exposed and are incubating the disease.**"

The team-report coupled with the recently adopted BSE chapter of the OIE International Health Code provides clarity to the situation – it will take time and we shall be very careful. The OIE itself calls for Canada to fulfill a number of requirements before July 3, 2003 being "considered as presenting a minimal BSE risk." Article 2.3.13.5 of the BSE chapter requires that the following be met to prove minimal risk, it

March 18, 2004

Page Four

Docket No. 03-080-1

states, “1) A risk assessment, as described in point 1) of Article 2.3.13.2 has been conducted and it has been demonstrated that appropriate measures have been taken for the relevant period of time to manage any risk identified; and either the last indigenous case of BSE was reported more than 7 years agoand the ban on feeding *meat-and-bone meal* and *greaves* derived from ruminants is effectively enforced or the last indigenous case of BSE has been reported less than 7 years ago and the BSE incidence rate, calculated on the basis of indigenous cases, has been less than one case per million during each of the last four consecutive 12-month periods within the cattle population over 24 months of age,,,,” This standard clearly calls for the implementation of meticulous and time-consuming efforts before any country with an indigenous BSE incident is released from scrutiny or sanction.

The team obviously did a very thorough investigation and came to a conclusion that with time proved to be true. For as we all know, the U.S. diagnosed a case of BSE from an imported cow from Canada on December 23, 2003. The ACFA believes that the team’s report and conclusion are still valid and provide the basis for a denial of imports of bone in beef or bone in beef products and especially live animals from Canada.

Actions Taken in the United States

Additionally, we in the U.S. are implementing an extensively more stringent testing and protocol program for the surveillance of BSE in live animals in our country. USDA is proposing, under the enhanced program, using statistically geographic modeling, sampling some 268,000 animals that would allow for the detection of BSE at a rate of 1 positive in 10 million adult cattle with a 99 percent confidence level. In other words, the enhanced program could detect BSE even if there were only five positive

March 18, 2004

Page Five

Docket No. 03-080-1

animals in the entire country. Sampling some 201,000 animals would allow for the detection of BSE at the same rate at a 95 percent confidence level. Canada is not implementing a testing program anywhere near these levels of detection. Until such time as they do it is premature to assume that they are "minimally at risk" compared to the U.S.

Requirements of the November 2003 Proposed Rule

The Federal Register notice states, "The USDA's Food Safety and Inspection Service (FSIS) has established as (*Specified Risk Material*) SRM's the skull, brain, trigeminal ganglia, eyes, vertebral column, spinal cord, and dorsal root ganglia of cattle over 30 months of age, as well as all the tonsils and small intestine of cattle of all ages, and prohibits such SRM's from the human food supply. In addition, FSIS has, among other measures, required that nonambulatory, disabled cattle be excluded from the food supply. The Canadian Government has established similar safeguards." While Canada may have implemented similar measures on SRM's they have yet to adopt the regulatory program that U.S. producers have to abide by as it relates to blood, blood meal and Dried Poultry Waste (DPW). This discrepancy must be resolved before the U.S. allows live cattle or beef products from Canada, that have been exposed to these products, to enter the U.S.

Summary Comments

The ACFA clearly understands the principle of relying on science in developing a regulatory regime for BSE. However, these types of programs and the science they

March 18, 2004

Page Six

Docket No. 03-080-1

uphold are meaningless if the measures we implement are not mirrored or enforced by other exporting countries. Until such time as we have a clear demonstration of compliance, with all of the recently implemented regulations for BSE, we expose the U.S. beef industry to unnecessary risks.

Our position is clear. We believe the evidence still exists that there are real risks from the importation of Canadian live cattle. However, if we are unfortunate enough to have our own animal health agency ignore those and open up the borders there are other measures that need to be implemented. First of all, if USDA is going to ever allow live cattle to be imported from Canada they must be permanently identified. This requirement would include some form of permanent identification that would be clearly evident at any moment that the animal was reviewed, inspected or tested. Secondly, given the backlog of Canadian live and feeder cattle, awaiting export to the U.S., the USDA must provide safeguards to preclude the mass movement of contra seasonal imports of these animals. These measures must include some form of "staging" that would not allow for Canadian imports to exceed the numbers reflected for the same month over a 5-year average. For example: If the last 5-year average for the month of July were 20,000 head of finished cattle and 50,000 head of feeder cattle, a stop order, on the importation of Canadian live cattle, would be triggered at the 90% level (18,000 finished cattle and 45,000 feeder cattle). This type of staging will allow for a reasonable solution for a potentially devastating occurrence.

March 18, 2004

Page Seven

Docket No. 03-080-1

In closing, the ACFA believes that caution and concern should be the primary considerations for determining a final solution to this uncertain animal disease and human health issue. We have now experienced the results of an additional Canadian cow with BSE and we pray to escape the next one. The implementation of a final rule relaxing restrictions on Canada are premature and will certainly expose the agencies responsible for protecting herd health in the U.S., to jeopardy during the critical times that we face.

Sincerely,

A handwritten signature in cursive script, appearing to read "Les Heiden".

Les Heiden

President

CC: Arizona Congressional Delegation
Don Butler, Director Az Department of Agriculture
Az Representative Jake Flake
Az Representative Chuck Gray
Az Representative Lucy Mason