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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

RANCHERS CATTLEMEN ACTION LEGAL FUND)
UNITED STOCKGROWERS OF AMERICA,)

Plaintiff,)

vs.)

UNITED STATES DEPARTMENT OF AGRICULTURE,)
ANIMAL AND PLANT HEALTH INSPECTION)
SERVICE, et al.,)

Defendants.)

Cause No. CV-05-06-BLG-RFC

APPLICATION FOR
PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiff, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America ("R-CALF USA"), respectfully requests that the Court issue a preliminary injunction prohibiting the defendants the United States Department of Agriculture ("USDA"), Animal and Plant Health Inspection Service ("APHIS"), and Mike Johanns, in his capacity as Secretary of Agriculture,¹ from implementing the final rule published January 4, 2005 and titled "Bovine Spongiform Encephalopathy, Minimal-Risk Regions and Importation of Commodities; Final Rule and Notice," 70 Fed. Reg. 460 (the "Final Rule"). The Final Rule reverses a May 29, 2003, APHIS decision banning imports of cattle and edible bovine products from Canada, after a Canadian dairy cow was confirmed to have bovine spongiform encephalopathy ("BSE"). The Final Rule is scheduled to go into effect on March 7, 2005, and Plaintiffs seek to enjoin it until the lawfulness of the Final Rule can be reviewed in full by this Court. R-CALF USA requests the opportunity for oral argument on this Application for Preliminary Injunction.

As shown in the accompanying Memorandum of Points and Authorities in Support of Plaintiff's Application for Preliminary Injunction, the importation of cattle from Canada and Canadian meat and meat products authorized by the Final Rule creates significant, irreparable harm for R-CALF USA's members for which there is no remedy at law. Once these Canadian products are imported into the United States, R-CALF USA members will not be able to protect themselves against the increased risk of disease associated with those products. Also, the adverse public perception that results from USDA's authorizing importation of Canadian meat

¹ Secretary Johanns' name was automatically substituted as a defendant in this action for Ann M. Veneman, his predecessor in office, upon his swearing-in on January 20, 2005, by operation of Fed. R. Civ. P. 25(d)(1).

products and their commingling with the U.S. meat supply will further diminish domestic and foreign demand for U.S. beef produced by R-CALF USA's members.

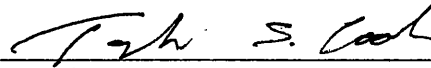
There is a substantial likelihood that R-CALF USA will prevail on the merits. USDA took action without performing any meaningful assessment of the risks to public health from the Final Rule and did not describe the criteria by which it judged the risk to be acceptable. It assumed the incidence of BSE in Canada to be very low with insufficient data, and subsequent events have proved that assumption to be overly optimistic. It relied largely on its assertion that feed bans in Canada and the U.S. would stop the transmission of BSE, when the facts showed that there were many breaches in the feed ban "firewall." It opened the border to meat from Canadian cattle 30 months of age or older, without justification and without meaningful public comment. It failed to conduct the reviews of its action required by the National Environmental Policy Act and the Regulatory Flexibility Act.

Finally, R-CALF USA raised serious questions that arise from USDA's action, and the balance of the hardships tips in its favor. Therefore, a preliminary injunction is warranted. A preliminary injunction would impose minimal burdens on USDA, and the public would not face an increased risk of consuming Canadian beef contaminated with BSE, as no additional exposure would be allowed.

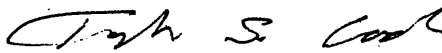
Accordingly, for the reasons set forth above and in the accompanying Memorandum of Points and Authorities and exhibits attached thereto, R-CALF USA respectfully requests that this Court issue a preliminary injunction, suspending implementation of USDA's Final Rule published January 4, 2005.

Dated: January 31, 2005

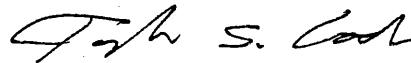
Respectfully submitted,



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